



**CIVIL SERVICE COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

LONDON N. BREED  
MAYOR

*Sent via Electronic Mail*

April 6, 2023

**NOTICE OF CIVIL SERVICE COMMISSION MEETING**

**SUBJECT: REVIEW OF REQUEST FOR APPROVAL OF PROPOSED PERSONAL SERVICES CONTRACT 10915-22/23; 40489-22/23; 44698-22/23; 49568-22/23; 42038-22/23; 43644-22/23; 44191-22/23; 45619-22/23; 48607-22/23; 46341-22/23; 47645-22/23; 40782-22/23; 49192-22/23; 46787-22/23; 42725-22/23; 47934-22/23; 40890-14/15; 47246-18/19; 36583-15/16; 42573-19/20; 48034-21/22; 48890-18/19; 45085-19/20 47657-21/22; AND 4083-12/13.**

The above matter will be considered by the Civil Service Commission at a hybrid meeting (in-person and virtual) in Room 400, City Hall, 1 Dr. Goodlett Place, San Francisco, California 94102 and through Cisco WebEx to be held on **April 17, 2023, at 2:00 p.m.**

This item will appear on the Ratification Agenda. Please refer to the attached notice for procedural and other information about Commission hearings.

Attendance by you or an authorized representative is recommended. Should you or your representative not attend, the Commission will rule on the information previously submitted and testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG  
Executive Officer

Attachments

Cc: Cynthia Avakian, Airport  
Alexander Burns, Department of Public Works  
Jenny Collins, Economic and Workforce Development  
Brett Conner, Children, Youth & Their Families  
Johanna Gendelman, Human Services Agency  
Shawndrea Hale, Public Utilities Commission  
Kelly Hiramoto, Department of Public Health  
Iftikhar Hussain, Health Service System  
Lynn Khaw, Office of the City Administrator  
Daniel Kwon, Public Utilities Commission  
Joan Lubamersky, Office of the City Administrator  
Amy Nuque, Municipal Transportation Agency  
Kevin R. Quan, Arts Commission  
Amanda Wentworth, Treasurer/Tax Collector  
Esperanza Zapien, Human Services Agency  
Commission File  
Commissioners' Binder  
Chron

## **NOTICE OF COMMISSION HEARING POLICIES AND PROCEDURES**

### **A. Commission Office**

The Civil Service Commission office is located at, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. The telephone number is (628) 652-1100. The fax number is (628) 652-1109. The email address is [civilservice@sfgov.org](mailto:civilservice@sfgov.org) and the web address is [www.sfgov.org/civilservice/](http://www.sfgov.org/civilservice/). Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

### **B. Policy Requiring Written Reports**

It is the policy of the Civil Service Commission that except for appeals filed under Civil Service Commission Rule 111A Position-Based Testing, all items appearing on its agenda be supported by a written report prepared by Commission or departmental staff. All documents referred to in any Agenda Document are posted adjacent to the Agenda, or if more than one (1) page in length, available for public inspection and copying at the Civil Service Commission office. Reports from City and County personnel supporting agenda items are submitted in accordance with the procedures established by the Executive Officer. Reports not submitted according to procedures, in the format and quantity required, and by the deadline, will not be calendared.

### **C. Policy on Written Submissions by Appellants**

All written material submitted by appellants to be considered by the Commission in support of an agenda item shall be submitted to the Commission office, no later than 5:00 p.m. on the fourth (4<sup>th</sup>) business day preceding the Commission meeting for which the item is calendared (ordinarily, on Tuesday). An original copy on 8 1/2-inch X 11 inch paper, three-hole punched on left margin, and page numbered in the bottom center margin, shall be provided. Written material submitted for the Commission's review becomes part of a public record and shall be open for public inspection.

### **D. Policy on Materials being Considered by the Commission**

Copies of all staff reports and materials being considered by the Civil Service Commission are available for public view 72 hours prior to the Civil Service Commission meeting on the Civil Service Commission's website at <https://sf.gov/civilservice> and in its office located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. If any materials related to an item on this agenda have been distributed to the Civil Service Commission after distribution of the agenda packet, those materials will be available for public inspection at the Civil Service Commission's during normal office hours (8:00 a.m. to 5:00 p.m. Monday through Friday).

### **E. Policy and Procedure for Hearings to be Scheduled after 5:00 p.m. and Requests for Postponement**

**A request to hear an item after 5:00 p.m. should be directed to the Executive Officer as soon as possible following the receipt of notification of an upcoming hearing. Requests may be made by telephone at (628) 652-1100 and confirmed in writing or by fax at (628) 652-1109.**

A request for a postponement (continuance) to delay an item to another meeting may be directed to the Commission Executive Officer by telephone or in writing. Before acting, the Executive Officer may refer certain requests to another City official for recommendation. Telephone requests must be confirmed in writing prior to the meeting. Immediately following the "Announcement of Changes" portion of the agenda at the beginning of the meeting, the Commission will consider a request for a postponement that has been previously denied. Appeals filed under Civil Service Commission Rule 111A Position-Based Testing shall be considered on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and the Department of Human Resources.

### **F. Policy and Procedure on Hearing Items Out of Order**

Requests to hear items out of order are to be directed to the Commission President at the beginning of the agenda. The President will rule on each request. Such requests may be granted with mutual agreement among the affected parties.

### **G. Procedure for Commission Hearings**

All Commission hearings on disputed matters shall conform to the following procedures: The Commission reserves the right to question each party during its presentation and, in its discretion, to modify any time allocations and requirements.

If a matter is severed from the *Consent Agenda* or the *Ratification Agenda*, presentation by the opponent will be for a maximum time limit of five (5) minutes and response by the departmental representative for a maximum time limit of five (5) minutes. Requests by the public to sever items from the [*Consent Agenda* or] *Ratification Agenda* must be provided with justification for the record.

For items on the *Regular Agenda*, presentation by the departmental representative for a maximum time of five (5) minutes and response by the opponent for a maximum time limit of five (5) minutes.

For items on the *Separations Agenda*, presentation by the department followed by the employee or employee's representative shall be for a maximum time limit of ten (10) minutes for each party unless extended by the Commission.

Each presentation shall conform to the following:

1. Opening summary of case (brief overview);
2. Discussion of evidence;
3. Corroborating witnesses, if necessary; and
4. Closing remarks.

The Commission may allocate five (5) minutes for each side to rebut evidence presented by the other side.

#### **H. Policy on Audio Recording of Commission Meetings**

As provided in the San Francisco Sunshine Ordinance, all Commission meetings are audio recorded in digital form. These audio recordings of open sessions are available starting on the day after the Commission meeting on the Civil Service Commission website at [www.sfgov.org/civilservice/](http://www.sfgov.org/civilservice/).

#### **I. Speaking before the Civil Service Commission**

Speaker cards are not required. The Commission will take public comment on all items appearing on the agenda at the time the item is heard. The Commission will take public comment on matters not on the Agenda, but within the jurisdiction of the Commission during the "Requests to Speak" portion of the regular meeting. Maximum time will be three (3) minutes. A subsequent comment after the three (3) minute period is limited to one (1) minute. The timer shall be in operation during public comment. Upon any specific request by a Commissioner, time may be extended.

#### **J. Public Comment and Due Process**

During general public comment, members of the public sometimes wish to address the Civil Service Commission regarding matters that may come before the Commission in its capacity as an adjudicative body. The Commission does not restrict this use of general public comment. To protect the due process rights of parties to its adjudicative proceedings, however, the Commission will not consider, in connection with any adjudicative proceeding, statements made during general public comment. If members of the public have information that they believe to be relevant to a matter that will come before the Commission in its adjudicative capacity, they may wish to address the Commission during the public comment portion of that adjudicative proceeding. The Commission will not consider public comment in connection with an adjudicative proceeding without providing the parties an opportunity to respond.

#### **K. Policy on use of Cell Phones, Pagers and Similar Sound-Producing Electronic Devices at and During Public Meetings**

The ringing and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

#### **Information on Disability Access**

The Civil Service Commission normally meets in Room 400 (Fourth Floor) City Hall, 1 Dr. Carlton B. Goodlett Place. However, meetings not held in this room are conducted in the Civic Center area. City Hall is wheelchair accessible. The closest accessible BART station is the Civic Center, located 2 ½ blocks from City Hall. Accessible MUNI lines serving City Hall are 47 Van Ness Avenue, 9 San Bruno and 71 Haight/Noriega, as well as the METRO stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call (415) 923-6142. Accessible curbside parking has been designated at points in the vicinity of City Hall adjacent to Grove Street and Van Ness Avenue.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week. For American Sign Language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the Commission office to make arrangements for the accommodation. Late requests will be honored, if possible.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call our ADA coordinator at (628) 652-1100 or email [civilservice@sfgov.org](mailto:civilservice@sfgov.org) to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City to accommodate these individuals.

#### **Know your Rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code)**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, or to obtain a free copy of the Sunshine Ordinance, contact Victor Young, Administrator of the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689 at (415) 554-7724, by fax: (415) 554-7854, by e-mail: [soff@sfgov.org](mailto:soff@sfgov.org), or on the City's website at [www.sfgov.org/bdsupvrs/sunshine](http://www.sfgov.org/bdsupvrs/sunshine).

#### **San Francisco Lobbyist Ordinance**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code Section 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Ave., Suite 220, San Francisco, CA 94102, telephone (415) 252-3100, fax (415) 252-3112 and web site <https://sfethics.org/>.



London Breed  
Mayor

Carol Isen  
Human Resources Director

Date: March 31, 2023

To: The Honorable Civil Service Commission

Through: Carol Isen  
Human Resources Director

From: Kevin R. Quan, ART  
Brett Conner, CHF  
Joan Lubamersky / Lynn Khaw, GSA  
Esperanza Zapien / Johanna Gendelman, HSA  
Amy Nuque, MTA  
Kelly Hiramoto, DPH  
Shawndrea Hale / Daniel Kwon, PUC  
Alexander Burns, DPW  
Iftikhar Hussain, HSS  
Cynthia Avakian, AIR  
Jenny Collins, ECN  
Amanda Wentworth, TTX

Subject: **Personal Services Contracts Approval Request**

This report contains twenty-five (25) personal services contracts (PSCs) in accordance with the revised Civil Service Commission (CSC) procedures for processing PSCs that became effective on November 5, 2014.

The services proposed by these contracts have been reviewed by Department of Human Resources (DHR) staff to evaluate whether the requesting departments have complied with City policy and procedures regarding PSCs. The proposed PSCs have been posted on the DHR website for seven (7) calendar days. CSC procedures for processing PSCs require that any appeal of these contracts be filed in the office of the CSC, Executive Officer during the posting period.

No timely appeals have been filed regarding the PSCs contained in this report. These proposed PSCs are being submitted to the CSC for ratification/approval.

DHR has prepared the following cost summary for personal services contracts that have been processed through the Department of Human Resources Fiscal Year 22/23 to date:

Total of this Report	YTD Expedited Approvals FY2022-2023	Total for FY2022-2023
\$246,669,812	\$212,261,951	\$3,096,373,619

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# POSTING FOR

April 17, 2023

## PROPOSED PERSONAL SERVICES CONTRACTS – REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
<u>10915 - 22/23</u>	ARTS COMMISSION	\$100,000,000.00	Fine art services and consulting for artworks in the collection and care of the City and County of San Francisco. Scope of work may include the handling, transportation, conservation, restoration, cleaning, packing, sorting, storing, framing, photography, installation, and de-installation of artworks including those of monumental scale. Services also include the design and fabrication of integral hardware, pedestals, cases, and plaques. Additionally, there are specialized consulting services to evaluate the condition of existing and proposed artworks.	March 1, 2023		CONTINUED
<u>40489 - 22/23</u>	CHILDREN; YOUTH & THEIR FAMILIES	\$3,800,000.00	At the request of its Oversight and Advisory Committee, the Department of Children, Youth and Their Families seeks to engage a professional event planner to help in the coordination and logistics of multiple community engagement events and focus groups to be held throughout the funding cycle. These events will be an important department outreach initiative to connect directly with San Francisco citizens and gain feedback from key stakeholders. They will	July 1, 2023	June 30, 2029	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
			<p>allow the department to confer directly with the nonprofit organizations providing youth services in the city, as well as the direct recipients of these services.</p> <p>The Department of Children, Youth and Their Families seeks a fiscal intermediary to provide fiscal and human resources support the Youth Empowerment Allocation's youth-led initiatives and projects. The Youth Empowerment Allocation is a funding stream established in San Francisco City Charter Section 16.108 (i)(2)(A)(vi), which states the department's annual Children and Youth Fund support must "include funding for youth-initiated projects totaling at least 3 percent of the total proposed expenditures from the Fund for the cycle." These funds are referred to as the Youth Empowerment Allocation. The department seeks a contract with a fiscal intermediary that can provide fiscal management to youth-initiated projects, manage annual events, and hire and support youth interns to act in an advisory capacity to the implementation of the Youth Empowerment Allocation.</p>	July 1, 2023	June 30, 2029	REGULAR
<u>44698 - 22/23</u>	CHILDREN; YOUTH & THEIR FAMILIES	\$5,300,000.00				
<u>49568 - 22/23</u>	CHILDREN; YOUTH & THEIR FAMILIES	\$25,500,000.00	<p>This request is for professional technical assistance and capacity building for department grant-funded nonprofit programs providing direct services to children, youth and their families. Capacity building may also be made available as continuing education to department staff whose roles involve support of funded programs. Technical assistance and capacity building will</p>	July 1, 2023	June 30, 2029	REGULAR



<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
			be provided broadly to address issues of program quality and administrative capability.			
			Contractor(s) shall provide the City and County of San Francisco (the City) with unrestricted access to the following non-exhaustive list of types of technology research services: proprietary research and analysis about technology related trends; data and analytics; development and research; infrastructure and operations; sourcing and vendor management; strategy; change management; mission-critical solutions; security and risk; and enterprise architecture. These services are provided through access to online content in the form of research, technology-related data, best practice tools, training materials, and advisory.	July 1, 2023	June 29, 2028	REGULAR
<u>42038 - 22/23</u>	GENERAL SERVICES AGENCY - CITY ADMIN	\$18,000,000.00				
			The Permit Center seeks professional services to implement a streamlined and digital workflow solution, including data collecting and sharing. The professional services will configure and implement an inspection scheduler and workflow tool to digitize, streamline, and automate the inspection processes involving multiple inspecting departments. The tool will allow customers to schedule on-site inspections and collect data from the applicant prior to arrival. The workflow tool also allows multiple departments to access and view the data, make updates to the data prior to inspection, and allows departments to collect and record new data during the mobile inspection process. The	May 1, 2023	April 30, 2025	REGULAR
<u>43644 - 22/23</u>	GENERAL SERVICES AGENCY - CITY ADMIN	\$250,000.00				

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
			<p>services will provide a technology solution that provides an integrated and complete digital workflow. The solution will also be scalable to other use cases across multiple permitting and inspection services across the Permit Center.</p>			
<u>44191 - 22/23</u>	GENERAL SERVICES AGENCY - CITY ADMIN	\$300,000.00	<p>Currently, the City and County of San Francisco has a number of electric vehicle charging dispensers, or electric vehicle supply equipment ("EVSE"), which are proprietary devices. The EVSE is integrated with a patented software interface. The contracted services will cover maintenance of proprietary software, wireless network upkeep and monitoring, customized programming, quarterly energy use reporting, security patches, remote monitoring, onsite troubleshooting and repairs, notification services for outages and other issues identified remotely, visual inspection of charging units, unit cables and the load management controller oversight, and onsite hardware and software maintenance.</p>	June 1, 2023	May 31, 2028	REGULAR
<u>45619 - 22/23</u>	GENERAL SERVICES AGENCY - CITY ADMIN	\$4,600,000.00	<p>Contractor(s) to provide crane services to hoist materials, equipment, tools, and supplies from one location to another or to and from a roof. Services shall cover various scopes and complexity of the projects. The weight and type of the materials to be craned and the height and reach of the crane will need to be evaluated for each project. Contractors will provide cranes with certified operators that possess the required certifications based on the types of cranes and levels of expertise. The lifting capacities of</p>	April 18, 2023	April 16, 2028	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
			cranes can range from 30 tons to 500 tons and heights from 25 feet to over 197 feet. Contract(s) will be available for all City departments where (1) departments do not have cranes and/or operators or (2) departments have a crane but do not have the right crane or certified operator or at times when the crane is out of service.			
<a href="#"><u>48607 - 22/23</u></a>	HUMAN SERVICES	\$800,000.00	Provide web-based time study to HSA-DAS (Human Services Agency/Department of Aging and Disability Services) and HSH(San Francisco Department of Supportive Housing and Homelessness) service providers and internal HSA employees of over 1300 staff and fiscal administrators.	July 1, 2023	June 30, 2027	REGULAR
<a href="#"><u>46341 - 22/23</u></a>	MUNICIPAL TRANSPORTATION AGENCY	\$300,000.00	To provide an off-site facility to collect pre-employment, post-accident, return-to-duty, and reasonable suspicion breath and urine samples during normal working hours and/or after hours for San Francisco Municipal Transportation Agency (SFMTA) employees and contractors. Also, to provide a mobile on-site facility to collect random, follow-up, reasonable suspicion, and post-accident breath and urine samples in compliance with DOT/FTA Drug and Alcohol Testing Regulations.	September 1, 2023	August 31, 2028	REGULAR
<a href="#"><u>47645 - 22/23</u></a>	MUNICIPAL TRANSPORTATION AGENCY	\$120,000.00	The consultant will provide the services of a Medical Review Officer (MRO) for the San Francisco Municipal Transportation Agency (SFMTA). This is a mandatory service under the	September 1, 2023	August 31, 2028	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
			Department of Transportation/Federal Transit Administration (DOT/FTA), Title 49: Transportation, Code of Federal Regulations, Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40 ).			
<u>40782 - 22/23</u>	PUBLIC HEALTH	\$5,000,000.00	The selected contractor will administer and provide services in a "test to treat" program in support of the ongoing COVID-19 response and possibly other communicable diseases. Under a test to treat program, individuals can get tested and—if they are positive and treatments are appropriate for them—receive a prescription from a health care provider and have their prescription filled, all in one location.	May 1, 2023	December 31, 2027	REGULAR
			The scope of proposed work is to have California Department of Transportation (Caltrans) performed technical review of the Project Study Report-Project Report (PSR-PR) in order to obtain Caltrans' approval for Lower Alemany Area Stormwater Improvements Project (LAASIP) as several project elements (including the tunnel shaft and portions of tunnel) will be within Caltrans' jurisdiction. LAASIP is one of the regulatory compliance projects to improve collection system capacity during wet weather months within the area between Ellsworth Street and Barneveld Avenue in the Lower Alemany Area of San Francisco.			
<u>49192 - 22/23</u>	PUBLIC UTILITIES COMMISSION	\$450,000.00		February 7, 2023	March 31, 2026	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
<u>46787 - 22/23</u>	GENERAL SERVICES AGENCY - PUBLIC WORKS	\$3,000,000.00	Provide specialized services in Waterproofing Consultation to support Public Works design staff on an as-needed basis. The Consultants will provide expert waterproofing consultation services to ensure that our projects are designed and constructed to the best quality standards of waterproofing. Periodically, provide independent third-party evaluation of design prepared by City staff from waterproofing perspective.	April 17, 2023	December 31, 2029	REGULAR
<u>42725 - 22/23</u>	HEALTH SERVICE SYSTEM	\$1,383,200.00	Temporary as-needed on-site professional telephonic call-center support for Active and Retired Members of the San Francisco Health Service System.	June 1, 2023	December 31, 2024	REGULAR
<u>47934 - 22/23</u>	HEALTH SERVICE SYSTEM	\$615,600.00	Request for Proposal (RFP) for As-needed Off-site Call-Center Support for the San Francisco Health Service System Member Services Unit.	June 1, 2023	December 31, 2024	REGULAR
			<b>TOTAL AMOUNT \$169,418,800</b>			

# POSTING FOR

April 17, 2023

## PROPOSED PERSONAL SERVICES CONTRACTS – Modifications

PSC Number	<u>Commission Hearing Date</u>	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
40890 - 14/15 - MODIFICATIONS	April 17, 2023	AIRPORT COMMISSION -- AIR	\$40,000,000	\$110,000,000	The Program Management Support Services Consultant (Consultant) will provide overall management expertise and oversight of the Capital Improvement Project (CIP) at the San Francisco International Airport (Airport). The scope of work will include project scoping and programming, design and construction management services, project controls for overall CIP, contract administration, cost estimating services, field inspection, document control, and other services in support of the CIP.	12/31/2024	12/31/2029	REGULAR
47246 - 18/19 - MODIFICATIONS	April 17, 2023	AIRPORT COMMISSION -- AIR	\$20,000,000	\$80,000,000	Contractor shall be responsible for the maintenance, repair, inspection, testing, repair and/or replacement of parts and components, and emergency call-back work for approximately 240 elevators, 138 escalators, and 43 electric walks at the Airport including the terminals, boarding areas, parking garages, and other field buildings.	07/01/2019	06/30/2024	REGULAR
36583 - 15/16 - MODIFICATIONS	April 17, 2023	ECONOMIC AND WORKFORCE	\$630,000	\$2,398,000	The consultant will assist the Office of Economic and Workforce Development (OEWD) with designing, implementing, and	07/01/2023	06/30/2025	REGULAR

<u>PSC Number</u>	<u>Commission Hearing Date</u>	<u>Department</u>	<u>Additional Amount</u>	<u>Cumulative Total</u>	<u>Description</u>	<u>Start Date</u>	<u>End Date</u>	<u>Approval Type</u>
		DEVELOPMENT -- ECN			<p>transitioning the existing online Workforce Central (WFC) client tracking and performance management platform to integrate new federal Workforce Innovation and Opportunities Act (WIOA) provisions.</p> <p><b>Scope Change:</b> In response to new reporting requirements and client tracking needs, this modification will support a database for Small Business as well as Workforce programming.</p>			
42573 - 19/20 - MODIFICATIONS	April 17, 2023	PUBLIC HEALTH -- DPH	\$500,000	\$1,000,000	<p>Contractor will provide cloud-based software for management of Department policies and procedures, including licensing and maintenance. The Department of Public Health (DPH) currently manages the multiplicity of its policies and procedures with a rudimentary system using MS Office applications (Word, Excel) which can be unwieldy and difficult to coordinate and manage. Reviewing and keeping policies and procedures current is required by federal regulators, the Centers for Medicare and Medicaid Services (CMS). DPH intends to purchase proprietary software (licensing and maintenance) to modernize and enable its policies and procedures tracking system to be more responsive to operational and regularly needs, and to ensure review of and alignment with evolving laws, guidelines, regulations, standards, and best practices. ,</p>	05/16/2023	12/31/2030	REGULAR

<u>PSC Number</u>	<u>Commission Hearing Date</u>	<u>Department</u>	<u>Additional Amount</u>	<u>Cumulative Total</u>	<u>Description</u>	<u>Start Date</u>	<u>End Date</u>	<u>Approval Type</u>
48034 - 21/22 - MODIFICATIONS	April 17, 2023	PUBLIC HEALTH -- DPH	\$1,591,012	\$9,000,000	The contractor(s) will provide encoder software for use in the San Francisco Department of Public Health Epic electronic health record and standalone use. The contractor will perform Health Information Management (HIM) coding of inpatient and outpatient procedural coding including, Medicare Severity-Diagnosis Related Groups (MS-DRG) and All Patients Refined-Diagnosis Related Groups (APR -DRG) reimbursement formulary, Ambulatory Payment Classification (APC) core grouping calculations and other payer formulary calculations, and clinical documentation integrity (CDI). The software also supports standard and customer user defined reporting. The value of this request covers estimated costs for licensing, maintenance, and related professional services such as training and consultation.	04/18/2023	12/31/2030	REGULAR
48890 - 18/19 - MODIFICATIONS	April 17, 2023	PUBLIC HEALTH -- DPH	\$650,000	\$1,549,000	The contractor(s) will provide a complete system for the management of Incident and Grievance responses which will assist in managing safety and quality of services within the San Francisco Health Network (SFHN). The system will include flexible event reports that encourage analysis and will be used to meet for regulatory requirements. In addition to a fully functional hosted application, the contractor will also provide project management, design, programming, testing,	05/16/2022	12/31/2030	REGULAR



PSC Number	<u>Commission Hearing Date</u>	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
					documentation, and system integration services in support of the application.			
45085 - 19/20 - MODIFICATIONS	April 17, 2023	PUBLIC UTILITIES COMMISSION -- PUC	\$3,600,000	\$9,300,000	The contractor works with ranchers and farmers to use biosolids as a fertilizer. The contractor secures all necessary permitting required for the use of biosolids as a fertilizer. Annual fees for permitting are paid by the contractor. The contractor manages the agronomic application of biosolids so that nitrogen added to fields does not exceed crop uptake needs. When sufficient biosolids have been added to a field to meet its nitrogen needs, the contractor moves the application operation to a new field. When moving to a new field, the contractor is responsible for coordinating with the trucking contractor for the transportation of biosolids to the new location. The contractor is responsible for ensuring the all county ordinances are followed during the course of operations at each field. This includes the posting of signs, flagging of buffer areas where biosolids are not to be applied, setting up a mobile weather station, a portable toilet and a washdown station for trucks. The contractor is responsible for the spreading and discing (incorporation) of the biosolids on each field. Co-ordination with the ranchers, farmers, and county is the responsibility of the contractor.	04/15/2023	04/14/2027	REGULAR

<u>PSC Number</u>	<u>Commission Hearing Date</u>	<u>Department</u>	<u>Additional Amount</u>	<u>Cumulative Total</u>	<u>Description</u>	<u>Start Date</u>	<u>End Date</u>	<u>Approval Type</u>
47657 - 21/22 - MODIFICATIONS	April 17, 2023	PUBLIC UTILITIES COMMISSION -- PUC	\$280,000	\$630,000	An independent review of revenue requirements, costs of service, and rates for the utilities under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC).	03/03/2023	06/30/2024	REGULAR
4083 12/13 - MODIFICATIONS	April 17, 2023	TREASURER/TAX COLLECTOR -- TTX	\$10,000,000	\$18,200,000	The Gross Receipts Tax and Business Registration Fees Ordinance (2012 Proposition E) was approved by San Francisco voters on November 6, 2012. It mandates that the City implement changes to local business taxes and registration fees by January 1, 2014 with a phased implementation through 2018. The Treasurer & Tax Collector has previously procured proprietary software that requires data migration and business process development to meet the requirements of the Ordinance.	03/09/2023	05/31/2033	REGULAR
<b>TOTAL AMOUNT \$77,251,012</b>								

**Regular/Continuing/Annual  
Personal Services Contracts**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: ARTS COMMISSION -- ART

Dept. Code: ART

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Fine Arts Conservation, Maintenance and Handling Services

Funding Source: General Funds, Bonds or Special Revenue

PSC Duration: annual memo required

PSC Amount: \$100,000,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Fine art services and consulting for artworks in the collection and care of the City and County of San Francisco. Scope of work may include the handling, transportation, conservation, restoration, cleaning, packing, sorting, storing, framing, photography, installation, and de-installation of artworks including those of monumental scale. Services also include the design and fabrication of integral hardware, pedestals, cases, and plaques. Additionally, there are specialized consulting services to evaluate the condition of existing and proposed artworks.

B. Explain why this service is necessary and the consequence of denial:

The services are necessary because, the San Francisco Arts Commission (ART) is charged to maintain the works of art owned by the City and County (San Francisco Charter Section 5.103) and the City has over 4,000 art objects in its inventory. The services are essential for the Arts Commission to execute its mandate. If approval is denied, ART will be unable to fulfill its charter responsibility efficiently and effectively.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past via PSC #4077 - 12/13.

D. Will the contract(s) be renewed?

Yes, the contracts will be renewed dependent on the need for specific services and availability of funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The San Francisco Arts Commission (ART) is charged to maintain the works of art owned by the City and County (San Francisco Charter Section 5.103) and the City has over 4,000 art objects in its inventory. The services listed above are essential for the Arts Commission to execute its mandate. Such services require specialized training, expertise, or experience necessary for handling fine art, especially those artworks that are extremely large, heavy, fragile, or all three. Each object has its own unique considerations and circumstances that cannot be easily addressed class or individual.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

Contractors on these projects require 5 years' experience in providing art handling services, including expertise in installation and de-installation of artwork, especially artwork that is monumental in scale. Requires expertise in, and adherence to, industry standards for the packing, crating, and safe transportation & handling of artwork. Able to provide safe, secure storage for artwork in a climate-controlled storage facility. Some jobs will require a general contractors license. Contractors must carry fine arts insurance to cover loss or damage to artwork. For storage and transportation services, contractor(s) will provide secure, climatized storage facilities appropriate for the storage of works of fine art; transportation vehicles and packing materials, lifts, ladders, crane, rigging, and other specialty tools & equipment necessary for the de-installation, installation, and transportation of works of art of varying sizes, including monumental sculptures weighing in excess of 5 tons.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Requires 5 years' experience in providing art handling services, including skills/expertise/accreditation in installation and de-installation of artwork, especially artwork that is monumental in scale. Requires expertise in, and adherence to, industry standards for the packing, crating, and safe transportation & handling of artwork. Able to provide safe, secure storage for artwork in a climate-controlled storage facility. Some jobs will require a general contractors license. Contractors must carry fine arts insurance to cover loss or damage to artwork.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, for storage and transportation services, contractor(s) will provide secure, climatized storage facilities appropriate for the storage of works of fine art; transportation vehicles and packing materials, lifts, ladders, crane, rigging, and other specialty tools & equipment necessary for the de-installation, installation, and transportation of works of art of varying sizes, including monumental sculptures weighing in excess of 5 tons.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The subject matter is too specialized so there are no available resources within the City to obtain these services. Each artwork in the City's civic collection is unique requiring distinct specialized training, knowledge, and expertise.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Art service provider is not a Civil Service classification, and there are no Civil Service classifications that have the training, expertise, or experience necessary for handling fine art, especially those artworks that are extremely large, heavy, fragile, or all three. Furthermore, the city is self-insured and does not have the insurance coverage necessary to compensate for loss or damage to the artwork, should that occur.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. These services are of short duration and contracted for on an as needed basis.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation. No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. No training. The subject matter is too specialized. Each artwork in the City's civic collection is unique requiring distinct specialized training, knowledge, and expertise.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes.

**7. Union Notification:** On 01/27/2023, the Department notified the following employee organizations of this PSC/RFP request:  
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kevin R. Quan Phone: 415-252-2230 Email: Kevin.r.quan@sfgov.org

Address: 401 Van Ness Avenue, Suite 325 San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 10915 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

## Choi, Suzanne (HRD)

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**From:** Quan, Kevin (ART)  
**Sent:** Tuesday, January 31, 2023 9:16 AM  
**To:** Quan, Kevin (ART); plangrooferslocal40@gmail.com; rooferslocal40@gmail.com; Stan Eichenberger; dtuttle@oe3.org; dtubble@oe3.org; pkim@ifpte21.org; Najuawanda Daniels; Pierre King - UAPD; president@sanfranciscodsa.com; max.porter@seiu1021.org; kennethlomba@gmail.com; snaranjo@cirseiu.org; mdennis@twusf.org; roger marengo; pwilson@twusf.org; cmoyer@nccrc.org; Frigault, Noah (HRC); sfdpoa@icloud.com; mjayne@iam1414.org; Emanuel, Rachel (DEM); laborers261@gmail.com; Laxamana, Junko (DBI); jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; @sfpoa.org; tracym@sfpoa.org; mleach; rooferslocal40@gmail.com; sal@local16.org; Criss@sfmea.com; Julie.Meyers@sfgov.org; Stan Eichenberger; Jason Klumb; camaguey@sfmea.com (contact); ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Kbasconcillo@sfwater.org; Sandeep.lal@seiu1021.me; pcamarillo\_seiu@sbcglobal.net; MRainsford@local39.org; Wendy Frigillana; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmllocal300.org; Ramon Hernandez; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Sin.Yee.Poon@sfgov.org; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; l21pscreview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; l21pscreview@ifpte21.org; laborers261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; christina@sfmea.com; ecdemvoter@aol.com; Thomas Vitale; DHR-PSCCoordinator, DHR (HRD)  
**Subject:** RE: Receipt of Notice for new CONTINUED PCS over \$100K PSC # 10915 - 22/23

Please note that this is a Continuing PSC, please see the update union notification below.

RECEIPT for Union Notification for PSC 10915 - 22/23 more than \$100k

The ARTS COMMISSION -- ART has submitted a request for a Personal Services Contract (PSC) 10915 - 22/23 for \$100,000,000 for Initial Request services for the period 03/01/2023 – **Continuing**. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19589> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Kevin R. Quan  
Finance Manager  
Gender Pronoun: he/him/his  
p. 415-252-2230



San Francisco Arts Commission  
401 Van Ness Avenue, Suite 325  
San Francisco, CA 94102  
Web | Newsletter | Twitter | Facebook | Instagram | Flickr

The San Francisco Arts Commission acknowledges that we are on the unceded ancestral homeland of the Ramaytush Ohlone. We affirm the sovereign rights of their community as First Peoples and are committed to supporting the traditional and contemporary evolution of the American Indian community and uplifting contemporary indigenous voices and culture.

Please be mindful that all correspondence and documents submitted to the San Francisco Arts Commission are public records and, as such, are subject to the Sunshine Ordinance and can be requested by the public. If this happens, personal information such as Social Security numbers and phone numbers will be redacted.

-----Original Message-----

From: dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org> On Behalf Of Kevin.r.quan@sfgov.org

Sent: Friday, January 27, 2023 2:04 PM

To: Quan, Kevin (ART) <kevin.r.quan@sfgov.org>; plangrooferslocal40@gmail.com; rooferslocal40@gmail.com; Stan Eichenberger <seichenberger@local39.org>; dtuttle@oe3.org; dtubble@oe3.org; pkim@ifpte21.org; Najuwanda Daniels <najuawanda.daniels@seiu1021.org>; Pierre King - UAPD <pking@UAPD.com>; president@sanfranciscodsa.com; max.porter@seiu1021.org; kennethlomba@gmail.com; snaranjo@cirseiu.org; mdennis@twusf.org; roger marenco <rmarenco@twusf.org>; pwilson@twusf.org; cmoyer@nccrc.org; Frigault, Noah (HRC) <noah.frigault@sfgov.org>; sfdpoa@icloud.com; mjayne@iam1414.org; Emanuel, Rachel (DEM) <rachel.emanuel@sfgov.org>; laborers261@gmail.com; Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>; jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; @sfpoa.org; tracym@sfpoa.org; mleach <mleach@ibt856.org>; rooferslocal40@gmail.com; sal@local16.org; Criss@sfmea.com; Julie.Meyers@sfgov.org; Stan Eichenberger <seichenberger@local39.org>; Jason Klumb <Jason.Klumb@seiu1021.org>; camaguey@sfmea.com (contact) <camaguey@sfmea.com>; ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Kbasconillo@sfgwater.org; Sandeep.lal@seiu1021.me; pcamarillo\_seiu@sbcglobal.net; MRainsford@local39.org; Wendy Frigillana <wendy.frigillana@seiu1021.org>; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sfflocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; Ramon Hernandez <ramonliuna261@gmail.com>; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Sin.Yee.Poon@sfgov.org; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; l21pscreview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; l21pscreview@ifpte21.org; laborers261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; christina@sfmea.com; ecdemvoter@aol.com; Thomas Vitale <thomas.vitale@seiu1021.org>; Quan, Kevin (ART) <kevin.r.quan@sfgov.org>; DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>

Subject: Receipt of Notice for new PCS over \$100K PSC # 10915 - 22/23

RECEIPT for Union Notification for PSC 10915 - 22/23 more than \$100k

The ARTS COMMISSION -- ART has submitted a request for a Personal Services Contract (PSC) 10915 - 22/23 for \$100,000,000 for Initial Request services for the period 03/01/2023 – . Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19589> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: ARTS COMMISSION Dept. Code: ART

Type of Request: [ ] Initial [x] Modification of an existing PSC (PSC # 4077 12/13)

Type of Approval: [ ] Expedited [ ] Regular [ ] Omit Posting

Type of Service: Transportation, packing, storing, installation and deinstallation of artwork.

Funding Source: Art Enrichment

Table with 2 columns: PSC Original Approved Amount and PSC Original Approved Duration. Rows include PSC Mod#1-4 and PSC Cumulative Amount Proposed.

1. Description of Work

A. Scope of Work:

Fine art handling services for artworks in the collection of the City and County of San Francisco, including transportation, packing, storing, framing of fine art, de-installation and installation and de-installation of artworks including those of monumental scale, design and fabrication of pedestals and cases. Scope includes major installation and de-installation of monumental artwork including Beniamino Bufano's "Peace Monument" located on Brotherhood Way, weighing over 145,000 pounds. Scope Change Fine art services and consulting for artworks in the collection and care of the City and County of San Francisco. Scope of work may include the handling, transportation, conservation, restoration, cleaning, packing, storing, framing, photography, installation and de-installation of artworks including those of monumental scale. The design and fabrication of integral hardware, pedestals, and plaques. Specialized consulting services to evaluate the condition

B. Explain why this service is necessary and the consequence of denial:

The San Francisco Arts Commission (SFAC) is charged to "maintain the works of art owned by the City and County" (Charter Section 5.103) and the city has over 4,000 art objects in its inventory. The services listed above are essential for the Arts Commission to execute its mandate. If approval is denied, the SFAC will be unable to fulfill its charter responsibility.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.

Yes. See PSC # 4086 10/11 and #4076 12/13 and 4077 12/13

D. Will the contract(s) be renewed? Yes, dependent on need for services and funding availability

2. Union Notification: On 05/20/21, the Department notified the following employee organizations of this PSC/RFP request: all unions were notified

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FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4077 12/13

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 06/02/2021

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise:

Requires 5 years' experience in providing art handling services, including expertise in installation and de-installation of artwork, especially artwork that is monumental in scale. Requires expertise in, and adherence to, industry standards for the packing, crating, and safe transportation and handling of artwork. Able to provide safe, secure storage for artwork in climate controlled storage facility. Some jobs will require a general contractors license. Must carry fine arts insurance to cover loss or damage to art

B. Which, if any, civil service class(es) normally perform(s) this work?

none,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Contractor will provide secure, climatized storage facilities appropriate for the storage of works of fine art; transportation vehicles and packing materials, lifts, ladders, crane, rigging, and other specialty tools and equipment necessary for the de-installation, installation, and transportation of works of art of varying sizes, including monumental sculptures weighing in excess of 5 tons.

**4. Why Classified Civil Service Cannot Perform**

A. Explain why civil service classes are not applicable:

Art service provider is not a Civil Service classification, and there are no Civil Service classifications that have the training, expertise, or experience necessary for handling fine art, especially those artworks that are extremely large, heavy, fragile, or all three. Furthermore, the city is self-insured and does not have the insurance coverage necessary to compensate for loss or damage to the artwork, should that occur.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No. These services are of short duration and contracted for on an as needed basis.

**5. Additional Information (if "yes", attach explanation)**

**YES NO**

- A. Will the contractor directly supervise City and County employee?  YES  NO
- B. Will the contractor train City and County employee?  YES  NO  
None. Art service provider is not a Civil Service classification, and there are
- C. Are there legal mandates requiring the use of contractual services?  YES  NO
- D. Are there federal or state grant requirements regarding the use of contractual services?  YES  NO
- E. Has a board or commission determined that contracting is the most effective way to provide this service?  YES  NO
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? Work will be completed by contractors that have PSCs and others.  YES  NO

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD ON 05/20/21 BY:

Name: Kevin R. Quan Phone: 415-252-2230 Email: Kevin.r.quan@sfgov.org

Address: 401 Van Ness Avenue Suite 325 San Francisco, CA, 94102

You are viewing an archived web page collected at the request of [City of San Francisco](#) using [Archive-It](#). This page was captured on 21:32:00 Nov 02, 2022, and is part of the [Civil Service Commission](#) collection. The information on this web page may be out of date. See [All versions](#) of this archived page. Found 0 archived media items out of 0 total on this page. hide

## Civil Service Commission

### Civil Service Commission - July 18, 2016 - Minutes

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**Meeting Date:**

July 18, 2016 - 2:00pm

**Related Meeting Content:**[Agenda](#)[Supporting Documents](#)**Location:****MINUTES****Regular Meeting****July 18, 2016****2:00 p.m.****ROOM 400, CITY HALL****1 Dr. Carlton B. Goodlett Place****CALL TO ORDER**

2:05 p.m.

**ROLL CALL**

President Gina M. Roccanova Present

Vice President Kate Favetti Present

Commissioner Douglas S. Chan Present

Commissioner Scott R. Heldfond Present

President Gina M. Roccanova presided.

**REQUEST TO SPEAK ON ANY MATTER WITHIN THE JURISDICTION OF THE CIVIL SERVICE COMMISSION BUT NOT APPEARING ON TODAY'S AGENDA**

None.

**APPROVAL OF MINUTES - Action Item**

Regular Meeting of June 6, 2016

June 20, 2016: Postponed to the meeting of July 18, 2016.

**Action:** Adopted the minutes. (Vote of 3 to 0; President Roccanova was not present at the June 6, 2016 meeting and recused herself from voting.)

Regular Meeting of June 20, 2016

**Action:** Adopted the minutes. (Vote of 3 to 0; Vice President Favetti was not present at the June 20, 2016 meeting and recused herself from voting.)

### **ANNOUNCEMENTS**

Michael Brown, Executive Officer announced that SEIU Local 1021 has withdrawn their appeal under Item #8 on the Regular Agenda for Personal Services Contract #4119-11/12.

### **HUMAN RESOURCES DIRECTOR'S REPORT (Item No. 5)**

Micki Callahan, Human Resources Director provided an update to the Commission on the review of best hiring practices. Many ideas would not involve Civil Service Rule changes. One consideration is to use de-identification of eligible for managers when selecting potential candidates for interview. In addition, we may explore eligible lists without names. A more formal presentation and discussion can be expected in the future. The Department of Human Resources is also researching how electronic processing can capture required documentation up front or at the time of offer and acceptance, to streamline the hiring process.

### **EXECUTIVE OFFICER'S REPORT (Item No. 6)**

None.



**0238- Review of Request for Approval of Proposed Personal Services Contracts.**  
**16-8 (Item No. 7)**

PSC#	Department	Amount	Type of Service	Type of Approval	Duration
42752-15/16	Airport Commission	\$55,000,000	<p>Project Management Support Services (PMSS) and Design-Build (DB) service teams will manage the design and construction of the Wayfinding Enhancement Program (The Program) at the San Francisco International Airport (SFO). Services include project controls, scheduling, document control, design management, contracts management, architectural, engineering, environmental and graphic design services, and construction. Services will include:</p> <ul style="list-style-type: none"> <li>-Development of airport-wide wayfinding plan, including improvements to virtual gateways, roadways, parking, curbside, terminal, dining and shopping, and gates</li> <li>-Development of airport-wide Signage Guideline Standards</li> <li>-Development of an airport-wide implementation plan for signage upgrades with phased and interim approaches</li> <li>-Graphic and environmental design services for ongoing airport campus requirements</li> <li>-Management of graphic design, industrial design, prototyping, use and experience studies, geographic information system (GIS) mapping, dynamic display technology and information and technology systems.</li> </ul> <p>Of the total \$55,000,000 PSC Amount, the current estimated construction cost is \$45,000,000.</p>	Regular	12/31/2021

PSC#	Department	Amount	Type of Service	Type of Approval	Duration
47124-15/16	Airport Commission	\$60,000,000	<p>Project Management Support Services (PMSS) and Design-Build (DB) service teams with airport design and management expertise are required to manage the design and construction of the Superbay Hangar Fire Protection System Replacement Project ("Project"). Services to be provided include project controls, scheduling, document control, design management, contracts management, architectural and engineering design services, and construction of the Project. This Project will address the currently nonfunctional fire suppression systems through</p>	Regular	12/31/2019

full system replacement within the hangar and system components auxiliary to the hangar, including the existing fire suppression pump house, storage tanks, and new utilities infrastructure required to support the new fire suppression system and meet National Fire Protection Association (NFPA) requirements.

The San Francisco Public Utilities Commission (SFPUC) is seeking the services of six (6) consultants to increase the participation of small and micro construction, construction management, and related professional services firms for the advancement of the Water System Improvement Program (WSIP), Sewer System Improvement Program (SSIP), Hetchy Capital Improvement Projects (HCIP) and Auxiliary Water Supply System (AWSS) projects.

45314-15/16	Public Utilities Commission	\$1,000,000	<p>The Contractor Engagement Support Services will include work in the following areas:</p> <ol style="list-style-type: none"> <li>1. Marketing and promoting of contracting opportunities;</li> <li>2. Regional construction contractor services, SFPUC – Local Business Enterprise (LBE) Program site visits;</li> <li>3. Specialized Technical Support Services; and</li> <li>4. Creating economic development strategies to enhance the LBE Program.</li> </ol>	Regular	7/30/2021
45324-15/16	Public Utilities Commission	\$8,000,000	<p>A pool of qualified as-needed consultants will support the San Francisco Public Utilities Commission's (SFPUC) efforts to implement the Commission approved Community Benefits Policy across the agency and throughout the Sewer System Improvement Program (SSIP), a 20-year, multi-billion dollar citywide investment upgrading our aging sewer infrastructure. The SSIP will ensure San Francisco has a reliable and seismically safe sewer system that promotes community benefits, economic inclusion, and environmental justice.</p>	Regular	4/1/2024
43283-15/16	Mayor	\$520,000	<p>Preparation on background studies necessary for completion of environmental reviews required for federally supported housing and community development projects. Studies would include air quality analyses using California Emission Estimator Model, health risk analyses, traffic studies, noise assessments, toxic substance analyses, geotechnical reports. Preparation of Environmental Impact Studies for housing developments.</p>	Regular	6/30/2021

PSC#	Department	Amount	Type of Service	Type of Approval	Duration
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		Current Approved Amount	Fine art handling services for artworks in the collection of the City and County of San Francisco, including transportation, packing, storing, framing of fine art, de-installation and installation and de-installation of artworks including those of monumental scale, design and fabrication of pedestals and cases. Scope includes major installation and de-installation of monumental artwork including Reniamino Bufano's "Peace Monument" located on Brotherhood Way, weighing over 145,000 pounds.		
		\$3,700,000			
		Increase Amount Requested	<b>Scope Change:</b>		
4077-12/13	Arts Commission	\$8,000,000	Fine art services and consulting for artworks in the collection and care of the City and County of San Francisco. Scope of work may include the handling, transportation, conservation, restoration, cleaning, packing, sorting, framing, photography, installation and de-installation of artworks including those of monumental scale. The design and fabrication of integral hardware, pedestals, and plaques. Specialized consulting services to evaluate the condition of existing and proposed artworks. Major projects will include conservation and installations of fine art located throughout the city, including San Francisco International Airport.	Modification	6/29/2021
		New Total Amount Requested			
		\$11,700,000			
		Current Approved Amount	Within the Pavement to Parks Program, a non-profit organization will serve as technical assistance provider and fiscal sponsor for local neighborhood groups, businesses, individuals, and other interested organizations to facilitate the discussions, community design, funding, implementation, and maintenance of Pavement to Parks projects. The Technical Assistance and Neighborhood Sponsor will facilitate and establish partnerships with interested neighborhood organizations. Before any funds are to be committed or temporary installations, the Technical Assistance and Neighborhood Sponsor must establish a Memorandum of Understanding (MOU) with such interested local neighborhood groups, business, or other organization, with prior review and approval by the Planning Department Liaison.		
		\$400,000			
		Increase Amount Requested			
35583-13/14	City Planning	\$800,000		Modification	10/31/2018
		New Total Amount Requested			
		\$1,200,000			
		Current Approved Amount	The consultant will provide technical support and conduct additional, up-to-date analysis of rail schedule data; utilize Trapeze scheduling software that programs Muni's rail schedulers; update the initially-proposed schedule change recommendations; and, identify effective approaches to schedule building due to scheduling enhancements that are ready for implementation. As part of its Muni Forward	Modification	6/30/2019
32412-14/15	Municipal Transportation Agency	\$250,000			
		Increase Amount Requested			

\$0 program of transit improvements, the San Francisco Municipal Transportation Agency (SFMTA) is introducing new schedules and service levels for many of its routes. Proposed work is directly related to the implementation of these new schedules.

New Total Amount Requested

\$250,000

Current Approved Amount

\$45,000,000

4176-07/08 Public Utilities Commission

Increase Amount Requested

\$0

Program Management, Risk Management, Independent Technical Reviews, Program Construction Management, Cost Estimating, Labor and Contract Relations, Communications for Water System Improvement Program (WSIP).

Modification 3/2/2019

New Total Amount Requested

\$45,000,000

Current Approved Amount

4057-12/13 City Administrator

Increase Amount Requested

\$252,000

The contractor will develop and implement an expanded employee outreach and education program on the City's labor laws. Primary activities include community outreach, employee workshops and trainings, counseling and referral services. The program will be conducted in as many languages as possible with an emphasis on immigrant and low-income communities.

Modification 6/30/2017

New Total Amount Requested

\$1,950,000

PSC#	Department	Amount	Type of Service	Type of Approval	Duration
2007-07/08	Department of Public Health	Current Approved Amount \$110,000,000 Increase Amount	Contractors will provide the following services to residents of San Francisco affected by Human Immunodeficiency Virus (HIV): comprehensive primary/clinical health care; TB-related diagnosis, monitoring, treatment, prevention education, community support, training/technical assistance, physician & radiology services; training & consultation services on intervention, prevention &	Modification	Continuous

Requested \$55,000,000  
 New Total Amount Requested \$165,000,000

education; ancillary services including psycho-social support, counseling, outreach, home visits & referrals; delivered meals & grocery center; complimentary therapies; client advocacy; legal assistance; mental health services; dental services; & testing.

**Scope Change:**

To provide the following services to residents of the City and County of San Francisco who are affected by Human Immunodeficiency virus (HIV), Sexually Transmitted Disease, and other communicable diseases: comprehensive primary care, monitoring, treatment, prevention education, community support, research, consultation services, fiscal administration, intervention services, ancillary services including psycho-social support, counseling, outreach, home visits, and referrals, delivered meals and grocery center, complementary therapies, client advocacy, legal advocacy, mental health, testing, and dental services. Funding to support these projects may be Federal, State and local grants and General Fund.

2005-07/08	Department of Public Health	Current Approved Amount \$300,000,000 Increase Amount Requested \$150,000,000 New Total Amount Requested \$450,000,000	Contractors will provide the following services to residents of San Francisco affected by Human Immunodeficiency Virus (HIV): case management, advocacy, mental health psychosocial support, benefits eligibility, money management/representative payee, transportation/vouchers, emergency financial assistance, housing for youth & housing grants/subsidies; mental health & substance abuse svcs; primary medical care, including dementia & dental care; other health care, including residential site/home care, hospice care, attendant care, home infusion therapy, alternative/complementary therapies, fiscal administration/intermediary support, respite (child) care, case management, peer advocacy, assisted housing program, permanent HIV housing, crisis hotline, & nutrition counseling; delivered meals, grocery center, emergency food boxes, & food solicitation.	Modification	Continuous
			<b>Scope Change:</b>  In collaboration with HIV System of Care division of the Department of Public Health programs, community based organizations will provide the following services to residents of the City and County of San Francisco affected by HIV who meet income eligibility requirements of the grantors and the Departments high risk and affected target populations. Services include ambulatory outpatient care, oral health care, medical case management,		

non-medical case management, peer advocacy, fiscal and administrative program support, technical assistance, treatment adherence services, outpatient substance use counseling, prevention with positives counselling, money management representative payee services, legal support advocacy services, benefits counseling, therapeutic monitoring, emergency financial assistance services, home health care hospice services, medical nutrition therapy, food bank, delivered meals, health education, risk reduction counseling, emergency housing, medical transportation, outreach, psychosocial support, referral and linkages, respite care, rehabilitation, treatment advocacy, facility based care, residential mental health, residential substance use services, detox, employment advocacy, hotline counseling, HIV consumer advocacy, grant writing, HIV Health Services Planning Council support. Funding will include Federal grants, State grants, local grants, and General Fund.

**0238-16-8**            **Cont'd.**

**Speakers:** Alaric Degrafinried, Public Utilities Commission spoke on PSCs #45314-15/16 and #45324-15/16.

Allison Cummings, Arts Commission spoke on PSC #4077-12/13.

Jacque Hale, Department of Public Health spoke on PSC #2007-07/08.

Jacque Hale and Dean Goodwin, Department of Public Health spoke on PSC #2005-07/08.

**Note:** President Rocanova recused herself from PSC #2007-07/08 due to conflict of interest. (Vote of 3 to 0)

**Action:** 1. Continue PSC #2007-07/08 to the meeting of August 1, 2016.

(Vote of 3 to 0)

2. Conditionally approved PSC #2005-07/08 as to be amended to reflect the appropriate classes being utilized, which will include medical services. (Vote of 4 to 0)

3. Adopted the report. Approved the remaining request for proposed Personal Services Contracts; Notify the Office of the Controller and the Office of Contract Administration. (Vote of 4 to 0)

**0234-16-8 Appeal by SEIU on the Municipal Transportation Agency’s request on the proposed Modification for PSC #4119-11/12. (Item No. 8)**

PSC#	Department	Amount	Type of Service	Type of Approval	Duration
4119-11/12	Municipal Transportation Agency	Current Approved Amount \$32,500,000  Increase Amount Requested \$77,698,000  New Total Amount Requested \$110,198,000	The contractor will provide a Vendor Managed Inventory (VMI) Services two-year pilot program to manage, support staff, and supply parts for its Rail Fleet maintenance program. Four materials storerooms are operated in support of the Rail Fleet: Green, Muni Metro East (MME), Cable Car, and Overhead Lines. The San Francisco Municipal Transportation Agency (SFMTA) has developed the following objectives for management of parts for the Rail Fleet only that consists of 151 BredaLRVs, 39 historic streetcars, and 31 cable cars: Supply vehicle parts on a cost-effective and efficient basis, providing inventory planning and automated replenishment of spare parts, with strict performance guidelines requiring defined response times and fill rates; Ensure parts provided allow SFMTA to meet its objectives in terms of reliability (i.e., Mean Distance Between Failures MDBF, service interruptions); and ensure SFMTA safety standards are met in any program activity.	Modification	12/31/2020

**Scope Change:**

The contractor provided a successful Vendor Managed Inventory (VMI) Services two-year pilot program to manage, support staff, and supply parts for its Rail Fleet maintenance program and will continue this service. Four materials storerooms are operated in support of the Rail Fleet: Green, Muni Metro East (MME), Cable Car, and Overhead Lines. The San Francisco Municipal Transportation Agency (SFMTA) has developed the following objectives for management of parts for the Rail Fleet only that consists of 151 Breda LRVs, 39 historic streetcars, and 31 cable cars: Supply vehicle parts on a cost-effective and efficient basis, providing inventory planning and automated replenishment of spare parts, with strict performance guidelines requiring defined response times and fill rates; Ensure parts provided allow SFMTA to meet its objectives in terms of reliability (i.e., Mean Distance Between Failures

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Community Engagement Planning

Funding Source: Children and Youth Fund

PSC Amount: \$3,800,000

PSC Est. Start Date: 07/01/2023

PSC Est. End Date 06/30/2029

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

At the request of its Oversight and Advisory Committee, the Department of Children, Youth and Their Families seeks to engage a professional event planner to help in the coordination and logistics of multiple community engagement events and focus groups to be held throughout the funding cycle. These events will be an important department outreach initiative to connect directly with San Francisco citizens and gain feedback from key stakeholders. They will allow the department to confer directly with the nonprofit organizations providing youth services in the city, as well as the direct recipients of these services.

B. Explain why this service is necessary and the consequence of denial:

The Children and Youth Fund is a voter-approved initiative, most recently reauthorized in 2014. Increasingly the department has sought to make stronger connections with the voters whose support is necessary to sustain the Fund and the citizens who utilize its services. Through community events held across San Francisco it will be able to outreach effectively to City residents. In addition, focus groups with nonprofit organizations and program participants will allow the department to understand on a continuous basis the needs of San Francisco's young people. These events will be vital elements of the department's ongoing work to provide the best possible services to young people and their families.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This work is currently authorized under PSC 41526 - 17/18. During the current funding cycle the department has held a series of successful and informative community events that have allowed for increased program quality and improved planning for the future.

D. Will the contract(s) be renewed?

Contracts will not be renewed following the end of the new funding cycle on June 30, 2029.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Per City Charter Section 16.108 (Children and Youth Fund), the Department of Children, Youth and Their Families implements five-year grantmaking cycles in support of youth programming in San Francisco. In 2021 the department's planned 2018-23 cycle was extended by one year to account for planning delays resulting from the COVID-19 pandemic. The department wishes to establish a PSC for community engagement planning to cover the added sixth year of the 2018-23 cycle and the entirety of the coming 2024-29 cycle.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).



B. Explain the qualifying circumstances:

The department is planning a relatively small number of community events and focus groups spread out over a multi-year period.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Event planning, logistics, budgeting, community engagement, focus group facilitation, and knowledge of San Francisco's diverse neighborhoods

B. Which, if any, civil service class(es) normally perform(s) this work? 1312, Public Information Officer; 3374, Volunteer/Outreach Coord; 4119, Events & Facilities Specialist; 9772, Community Development Spec; 9774, Sr. Community Devl Spc 1; 9775, Sr Community Dev Spec 2;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City does not maintain resources necessary to perform this work, which requires specific skills and occurs on an irregular basis.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Due to the intermittent nature of the work it is not feasible for civil service classes to perform it.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The community events the department will host require a significant commitment of time and resources, as well as in-depth knowledge of the City. These intense periods of work will be sparsely distributed throughout the multi-year funding cycle. It is not practical to adopt new civil service classes to perform it.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. The contractor will not provide training to department staff, who will serve in a supervisory capacity only.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes. It is not known at this time which contractor will be providing these services in the 2024-29 cycle. It is possible that a current supplier will successfully apply to the RFQ and ultimately be awarded the contract.

7. **Union Notification:** On 01/20/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Management & Superv Local 21; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21; Professional & Tech Engrs, SFAPP; SEIU 1021 Miscellaneous; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Brett Conner Phone: 628-652-7109 Email: brett.conner@dcyf.org

Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 40489 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

**From:** [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) on behalf of [brett.conner@dcyf.org](mailto:brett.conner@dcyf.org)  
**To:** [Conner, Brett \(CHF\)](mailto:Conner,Brett@CHF); [max.porter@seiu1021.org](mailto:max.porter@seiu1021.org); [sarah.wilson@seiu1021.org](mailto:sarah.wilson@seiu1021.org); [Sandeep.lal@seiu1021.me](mailto:Sandeep.lal@seiu1021.me); [leah.berlanga@seiu1021.org](mailto:leah.berlanga@seiu1021.org); [Najuawanda Daniels](#); [Jason Klumb](#); [Frigault, Noah \(HRC\)](#); [Julie.Meyers@sfgov.org](mailto:Julie.Meyers@sfgov.org); [Thomas Vitale](#); [Ricardo.lopez@sfgov.org](mailto:Ricardo.lopez@sfgov.org); [Kbasconcillo@sfgwater.org](mailto:Kbasconcillo@sfgwater.org); [pcamarillo\\_seiu@sbcglobal.net](mailto:pcamarillo_seiu@sbcglobal.net); [Wendy Frigillana](#); [pscreview@seiu1021.org](mailto:pscreview@seiu1021.org); [ted.zarzecki@seiu1021.net](mailto:ted.zarzecki@seiu1021.net); [davidmkersten@gmail.com](mailto:davidmkersten@gmail.com); [xiumin.li@seiu1021.org](mailto:xiumin.li@seiu1021.org); [Sin.Yee.Poon@sfgov.org](mailto:Sin.Yee.Poon@sfgov.org); [david.canham@seiu1021.org](mailto:david.canham@seiu1021.org); [jtanner940@aol.com](mailto:jtanner940@aol.com); [Laxamana, Junko \(DBI\)](#); [amakayan@ifpte21.org](mailto:amakayan@ifpte21.org); [WendyWong26@yahoo.com](mailto:WendyWong26@yahoo.com); [wendywong26@yahoo.com](mailto:wendywong26@yahoo.com); [tmathews@ifpte21.org](mailto:tmathews@ifpte21.org); [kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org); [l21pscreview@ifpte21.org](mailto:l21pscreview@ifpte21.org); [Conner, Brett \(CHF\)](#); [DHR-PSCCoordinator, DHR \(HRD\)](#)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 40489 - 22/23  
**Date:** Friday, January 20, 2023 3:03:00 PM

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RECEIPT for Union Notification for PSC 40489 - 22/23 more than \$100k

The CHILDREN; YOUTH & THEIR FAMILIES -- CHF has submitted a request for a Personal Services Contract (PSC) 40489 - 22/23 for \$3,800,000 for Initial Request services for the period 07/01/2023 – 06/30/2029. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19787> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions

you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Community Engagement Planning

Funding Source: Children and Youth Fund

PSC Amount: \$500,000

PSC Est. Start Date: 07/01/2018

PSC Est. End Date 06/30/2023

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

At the request of its Oversight and Advisory Committee, the Department of Children, Youth and Their Families seeks to engage a professional event planner to help in the coordination and logistics of multiple community engagement events and focus groups to be held throughout the 2018-2023 funding cycle. These events will be an important department outreach initiative to connect directly with San Francisco citizens and gain feedback from key stakeholders. They will allow the department to confer directly with the nonprofit organizations providing youth services in the city, as well as the direct recipients of these services.

B. Explain why this service is necessary and the consequence of denial:

The Children and Youth Fund is a voter-approved initiative, most recently reauthorized in 2014. Increasingly the department has sought to make stronger connections with the voters whose support is necessary to sustain the Fund. Through community events held across San Francisco it will be able to outreach effectively to citizens. In addition, focus groups with nonprofit organizations and program participants will allow the department to understand on a continuous basis the needs of San Francisco's young people. These events will be vital elements of the department's ongoing work to provide the best possible services to young people and their families.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The department has not utilized these services in the past.

D. Will the contract(s) be renewed?

Contracts will not be renewed following the end of the new funding cycle on June 30, 2023.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

In November 2014 the voters of San Francisco approved Proposition C, which extended the Children and Youth Fund for another 25 years. An additional component of this legislation increased the length of the department's grant cycle to five years. The department wishes to establish a PSC for these services to cover the entire 2018-2023 cycle.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

The department is planning a relatively small number of community events and focus groups spread out over a five-year period.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Event planning, logistics, budgeting, community engagement, focus group organizing, knowledge of San Francisco's diverse neighborhoods
- B. Which, if any, civil service class(es) normally perform(s) this work? 1312, Public Information Officer; 3374, Volunteer/Outreach Coord; 4119, Events & Facilities Specialist;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Due to the intermittent nature of the work is not feasible for civil service classes to perform it.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The community events the department will host require a significant commitment of time and resources, as well as in-depth knowledge of the City. These intense periods of work will be sparsely distributed throughout the five-year funding cycle. It is not practical to adopt new civil service classes to perform it.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. The contractor will not provide training to staff, who will serve in a supervisory capacity only.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification: On 11/22/2017, the Department notified the following employee organizations of this PSC/RFP request:**

Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21; SEIU 1021 Miscellaneous; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Brett Conner Phone: 628-652-7109 Email: brett.conner@dcyf.org

Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 41526 - 17/18

DHR Analysis/Recommendation:

action date: 04/02/2018

Commission Approval Required

Approved by Civil Service Commission

04/02/2018 DHR Approved for 04/02/2018



PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Fiscal Intermediary Services for Youth Empowerment Allocation

Funding Source: Children and Youth Fund

PSC Amount: \$5,300,000

PSC Est. Start Date: 07/01/2023

PSC Est. End Date 06/30/2029

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Department of Children, Youth and Their Families seeks a fiscal intermediary to provide fiscal and human resources support the Youth Empowerment Allocation's youth-led initiatives and projects. The Youth Empowerment Allocation is a funding stream established in San Francisco City Charter Section 16.108 (i)(2)(A) (vi), which states the department's annual Children and Youth Fund support must "include funding for youth-initiated projects totaling at least 3 percent of the total proposed expenditures from the Fund for the cycle." These funds are referred to as the Youth Empowerment Allocation. The department seeks a contract with a fiscal intermediary that can provide fiscal management to youth-initiated projects, manage annual events, and hire and support youth interns to act in an advisory capacity to the implementation of the Youth Empowerment Allocation.

B. Explain why this service is necessary and the consequence of denial:

The City Charter requires that 3% of the Children and Youth Fund goes to youth-initiated projects. If this request is denied, the department will seek to grant the funds to a nonprofit to develop and run youth-initiated programs, which would limit the pool of possible service providers.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Currently the Youth Empowerment Allocation fiscal intermediary services are provided under 47035 - 17/18, and prior to that under PSC 4054 13/14. The department uses a personal service contract to maintain strategic development and design of the activities and services provided through the Youth Empowerment Allocation. The strategic development and oversight for the Youth Empowerment Allocation will be a senior planner in the 9700 Community Development Specialist series.

D. Will the contract(s) be renewed?

The contract will not be renewed following the end of the new funding cycle on June 30, 2029.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Per City Charter Section 16.108 (Children and Youth Fund), the Department of Children, Youth and Their Families implements five-year grantmaking cycles in support of youth programming in San Francisco. In 2021 the department's planned 2018-23 cycle was extended by one year to account for planning delays resulting from the COVID-19 pandemic. The department wishes to establish a PSC for fiscal intermediary services to cover the added sixth year of the 2018-23 cycle and the entirety of the coming 2024-29 cycle.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

- B. Explain the qualifying circumstances:  
This work is required on a part-time, temporary basis only, and requires specific skills and capacity.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: The department is seeking a contractor with strong fiscal and human resource systems to manage the disbursement of the Youth Empowerment Allocation's funds and to hire and manage youth advisors. The contractor must have expertise running youth-led events.
- B. Which, if any, civil service class(es) normally perform(s) this work? 9772, Community Development Spec; 9774, Sr. Community Devl Spc 1; 9775, Sr Community Dev Spec 2;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Neither the direct youth advisory work nor the administration of the program is normally performed by a civil service class.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The department is not structured to house and support large scale youth-led programming, which would require hiring and supporting youth advisors that meet after business hours.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, due to the part-time, temporary nature of youth advisor roles, civil service classes are not practical for management of this program. The youth-led projects and initiatives of the Youth Empowerment Allocation are conducted by part-time, temporary youth advisors that are best managed by contractor staff.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. The scope of this contract will not include training for City staff.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes. It is not known at this time which contractor will be providing these services in the 2024-29 cycle. It is possible that a current supplier will successfully apply to the RFQ and ultimately be awarded the contract.

7. **Union Notification:** On 01/20/2023, the Department notified the following employee organizations of this PSC/RFP request:  
SEIU 1021 Miscellaneous; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Brett Conner Phone: 628-652-7109 Email: brett.conner@dcyf.org

Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 44698 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

**From:** [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) on behalf of [brett.conner@dcyf.org](mailto:brett.conner@dcyf.org)  
**To:** [RECEIPT for Union Notification for PSC 44698 - 22/23 more than \\$100k](mailto:Conner, Brett (CHF); max.porter@seiu1021.org; Laxamana, Junko (DBI); sarah.wilson@seiu1021.org; Sandeep.lal@seiu1021.me; leah.berlanga@seiu1021.org; Najuwanda Daniels; Jason Klumb; Frigault, Noah (HRC); Julie.Meyers@sfgov.org; Thomas Vitale; Ricardo.lopez@sfgov.org; Kbasconillo@sfwater.org; pcamarillo_seiu@sbcglobal.net; Wendy Frigillana; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; davidmkersten@gmail.com; xiumin.li@seiu1021.org; Sin.Yee.Poon@sfgov.org; david.canham@seiu1021.org; jtanner940@aol.com; Conner, Brett (CHF); DHR-PSCCoordinator, DHR (HRD)</a><br/><b>Subject:</b> Receipt of Notice for new PCS over $100K PSC # 44698 - 22/23<br/><b>Date:</b> Friday, January 20, 2023 2:56:02 PM</p><hr/></div><div data-bbox=)

The CHILDREN; YOUTH & THEIR FAMILIES -- CHF has submitted a request for a Personal Services Contract (PSC) 44698 - 22/23 for \$5,300,000 for Initial Request services for the period 07/01/2023 – 06/30/2029. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19786> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Fiscal Intermediary Services for Youth Empowerment Allocation

Funding Source: Children and Youth Fund

PSC Amount: \$3,000,000

PSC Est. Start Date: 07/01/2018

PSC Est. End Date 06/30/2023

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Department of Children, Youth and Their Families seeks a fiscal intermediary to provide fiscal and human resources support the Youth Empowerment Allocation's youth-led initiatives and projects. The Youth Empowerment Allocation is a funding stream established in the San Francisco City Charter, which states the department's annual Children and Youth Fund support must "include funding for youth-initiated projects totaling at least 3 percent of the total proposed expenditures from the Fund for the cycle." These funds are referred to as the Youth Empowerment Allocation. The department seeks a contract with a fiscal intermediary that can provide fiscal management to youth-initiated projects, manage annual events, hire and support youth interns to act in an advisory capacity to the implementation of the Youth Empowerment Allocation.

B. Explain why this service is necessary and the consequence of denial:

The City Charter requires that 3% of the Children and Youth Fund goes to youth-initiated projects. If this request is denied, the department will seek to grant the funds to a nonprofit to develop and run youth-initiated programs.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Currently the Youth Empowerment Allocation fiscal intermediary services are provided under PSC 4054 13/14. The department uses a personal service contract to maintain strategic development and design of the activities and services provided through the Youth Empowerment Allocation. The strategic development and oversight for the Youth Empowerment Allocation will be a senior planner in the 9700 Community Development Specialist series.

D. Will the contract(s) be renewed?

The contract will not be renewed following the end of the new funding cycle on June 30, 2023.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

In November 2014 the voters of San Francisco approved Proposition C, which extended the Children and Youth Fund for another 25 years. An additional component of this legislation increased the length of the department's grant cycle to five years. The department wishes to establish a PSC for these services to cover the entire 2018-2023 cycle.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

This work is required on a part-time, temporary basis only.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: The department is seeking a contractor with strong fiscal and human resource systems to manage the disbursement of the Youth Empowerment Allocation's funds and to hire and manage youth advisors. The contractor must have expertise running youth-led events.
- B. Which, if any, civil service class(es) normally perform(s) this work? 9774, Sr. Community Devl Spc 1;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The youth advisory work is not normally done by a civil service class.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The department is not structured to house and support large scale youth-led programming, which would require hiring and supporting youth advisors that meet after business hours. The youth advisor positions range from 1-2 year appointment. Youth work 10-15 hours per week in their advisory roles.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, due to the part-time, temporary nature of youth advisor roles. The youth-led projects and initiatives of the Youth Empowerment Allocation will be conducted by part-time, temporary youth advisors that are managed by contractor staff.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. The scope of this contract will not include training for City staff.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification: On 11/22/2017, the Department notified the following employee organizations of this PSC/RFP request:  
SEIU 1021 Miscellaneous; SEIU Local 1021**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Brett Conner Phone: 628-652-7109 Email: brett.conner@dcyf.org



Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47035 - 17/18

DHR Analysis/Recommendation:

action date: 04/02/2018

Commission Approval Required

Approved by Civil Service Commission

04/02/2018 DHR Approved for 04/02/2018

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Fiscal Intermediary Services for Youth Empowerment Fund

Funding Source: Children's Fund

PSC Amount: \$1,300,000

PSC Est. Start Date: 01/01/2014

PSC Est. End Date 06/30/2016

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Department of Children, Youth and Their Families (DCYF) seeks a fiscal intermediary to provide fiscal and human resources support for the Youth Empowerment Fund. The Youth Empowerment Fund is a funding stream established by the Children's Amendment. The Children's Amendment states that a minimum of three percent of the Children's Fund must be spent on youth-initiated projects. These funds are referred to as the Youth Empowerment Fund. DCYF seeks to contract with a fiscal intermediary that can provide fiscal management to youth-initiated projects, hire and support youth interns to act in an advisory capacity to the Fund and to manage annual events.

B. Explain why this service is necessary and the consequence of denial:

The Children's Amendment requires that 3% of the Children's Fund goes to youth-initiated projects. If this request is denied, DCYF will issue an Request for proposal (RFP) and grant the funds out to a nonprofit to develop and run youth-initiated programs.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

In the past the Youth Empowerment Fund was granted to a nonprofit. DCYF is seeking to use a personal service contract to maintain strategic development of the Fund and to design the activities and services provided through the Youth Empowerment Fund. The strategic development and oversight for the Fund will be a DCYF Senior Planner (classification 9774).

D. Will the contract(s) be renewed?

No. This request is for funding cycle ending June 30, 2016.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

This work is required on a part-time, temporary basis only.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: DCYF is seeking a contractor with strong fiscal and human resource systems to manage the disbursement of Youth Empowerment Funds and to hire and manage youth advisors. The contractor must have expertise running youth-led events.

B. Which, if any, civil service class(es) normally perform(s) this work? 9774, Sr. Community Devl Spc 1;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The youth advisory work for YEF is not normally done by a civil service class. DCYF will continue to use a permanent 9774 position to set the strategic direction for the Youth Empowerment Fund.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

DCYF is not structured to house and support large scale youth-led programming, which would require hiring and supporting youth advisors that meet after business hours. The youth advisors positions range from 1-2 year appointments. Youth work 10-15 hours per week in their advisory roles.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, due to the part-time, temporary nature of the youth advisor roles. The primary work for the Youth Empowerment Fund is conducted by part-time, temporary youth advisors that are managed by two part-time adult staff.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

No. The part-time youth advisors do not have staff training included in their scope of work. In addition, department staff do not require such training.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

**7. Union Notification:** On none, the Department notified the following employee organizations of this PSC/RFP request:

no unions notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Deedra Jackson Phone: 415-554-9329 Email: deedra@dcyf.org

Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 4054 13/14

DHR Analysis/Recommendation:

action date: 12/16/2013

Commission Approval Required

Approved by Civil Service Commission with conditions

12/16/2013 DHR Approved for 12/16/2013

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Technical Assistance and Capacity Building Services to Support City Funded Programs

Funding Source: Children and Youth Fund

PSC Amount: \$25,500,000 PSC Est. Start Date: 07/01/2023 PSC Est. End Date 06/30/2029

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

This request is for professional technical assistance and capacity building for department grant-funded nonprofit programs providing direct services to children, youth and their families. Capacity building may also be made available as continuing education to department staff whose roles involve support of funded programs. Technical assistance and capacity building will be provided broadly to address issues of program quality and administrative capability.

B. Explain why this service is necessary and the consequence of denial:

The department expects to support hundreds of nonprofit programs providing services to children and youth over the coming five-year funding cycle. San Francisco City Charter Section 16.108 (f)(4) specifically maintains "Technical assistance and capacity-building for service providers and community-based partners" as eligible uses of the Children and Youth Fund in recognition of the importance of providing dedicated, ongoing support to the nonprofits working in service to the city's most vulnerable citizens.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The department has engaged technical assistance and capacity building providers continuously over many years as part of its normal operations. Most recently the services were provided under PSC 4041 - 12/13 and 46296 - 17/18.

D. Will the contract(s) be renewed?

Contracts will not be renewed following the end of the new funding cycle on June 30, 2029.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Per San Francisco City Charter Section 16.108 (Children and Youth Fund), the Department of Children, Youth and Their Families implements five-year grantmaking cycles in support of youth programming in San Francisco. In 2021 the department's planned 2018-23 cycle was extended by one year to account for planning delays resulting from the COVID-19 pandemic. The department wishes to establish a PSC for technical assistance and capacity building services to cover the added sixth year of the 2018-23 cycle and the entirety of the coming 2024-29 cycle.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

The technical assistance and capacity building work performed for the department requires specific skills and knowledge, and occurs intermittently over the course of the funding cycle. There are times of significant activity followed by extended lulls.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Subject matter expertise in a broad array of youth development topics, including but not limited to early care & education; out of school time; educational support; enrichment, leadership & skill building; justice services; youth workforce development; mentorship; emotional well-being; family empowerment; and outreach and access. In-depth knowledge of the youth services sector both locally and nationally. Understanding of the elements necessary for a successful youth program. Competence in areas of racial equity and social justice. Expertise in nonprofit management, including financial practices, resource development, leadership, and governance. Ability to provide one-on-one coaching, group trainings, and cohort convenings both in-person and remotely.

B. Which, if any, civil service class(es) normally perform(s) this work? 1820, Junior Administrative Analyst; 1822, Administrative Analyst; 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 1825, Prnpl Admin Analyst II; 9772, Community Development Spec; 9774, Sr. Community Devl Spc 1; 9775, Sr Community Dev Spec 2;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City does not maintain sufficient skilled resources to meet the department's need.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

The department utilizes civil service classes in the 9700 Community Development Specialist and 1800 Administrative Analyst series for the ongoing monitoring and administration of grants. However, these classes do not have the capacity to provide ongoing technical assistance at scale over a multi-year period. In addition, due to the sensitive nature of some technical assistance engagements, an independent third party is required. The department has historically relied upon contractors for these services.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No; the scale and breadth of the services required do not lend themselves to civil service classes.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation. No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not. No. Staff training is not part of the scope of the department's capacity building contracts.

C. Are there legal mandates requiring the use of contractual services? No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement. No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action. No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department?  
If so, please explain.  
Yes. It is not known at this time which contractors will be providing these services in the 2024-29 cycle. It is possible that some current suppliers will successfully apply to the RFQ and ultimately be awarded contracts.

7. **Union Notification:** On 01/20/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Management & Superv Local 21; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21; Professional & Tech Engrs, SFAPP; SEIU 1021 Miscellaneous; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Brett Conner Phone: 628-652-7109 Email: brett.conner@dcyf.org

Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 49568 - 22/23

DHR Analysis/Recommendation:  
Commission Approval Required  
DHR Approved for 04/17/2023

Civil Service Commission Action:

# **Receipt of Union Notification(s)**



**From:** [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) on behalf of [brett.conner@dcyf.org](mailto:brett.conner@dcyf.org)  
**To:** [Conner, Brett \(CHF\)](mailto:Conner,Brett@CHF); [max.porter@seiu1021.org](mailto:max.porter@seiu1021.org); [sarah.wilson@seiu1021.org](mailto:sarah.wilson@seiu1021.org); [Sandeep.lal@seiu1021.me](mailto:Sandeep.lal@seiu1021.me); [leah.berlanga@seiu1021.org](mailto:leah.berlanga@seiu1021.org); [Najuawanda Daniels](mailto:Najuawanda.Daniels); [Jason Klumb](mailto:Jason.Klumb); [Frigault, Noah \(HRC\)](mailto:Frigault,Noah@HRC); [Julie.Meyers@sfgov.org](mailto:Julie.Meyers@sfgov.org); [Thomas Vitale](mailto:Thomas.Vitale); [Ricardo.lopez@sfgov.org](mailto:Ricardo.lopez@sfgov.org); [Kbasconcillo@swater.org](mailto:Kbasconcillo@swater.org); [pcamarillo\\_seiu@sbcglobal.net](mailto:pcamarillo_seiu@sbcglobal.net); [Wendy Frigillana](mailto:Wendy.Frigillana); [pscreview@seiu1021.org](mailto:pscreview@seiu1021.org); [ted.zarzecki@seiu1021.net](mailto:ted.zarzecki@seiu1021.net); [davidmkersten@gmail.com](mailto:davidmkersten@gmail.com); [xiumin.li@seiu1021.org](mailto:xiumin.li@seiu1021.org); [Sin.Yee.Poon@sfgov.org](mailto:Sin.Yee.Poon@sfgov.org); [david.canham@seiu1021.org](mailto:david.canham@seiu1021.org); [jtanner940@aol.com](mailto:jtanner940@aol.com); [Laxamana, Junko \(DBI\)](mailto:Laxamana,Junko@DBI); [amakayan@ifpte21.org](mailto:amakayan@ifpte21.org); [WendyWong26@yahoo.com](mailto:WendyWong26@yahoo.com); [wendywong26@yahoo.com](mailto:wendywong26@yahoo.com); [tmathews@ifpte21.org](mailto:tmathews@ifpte21.org); [kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org); [l21pscreview@ifpte21.org](mailto:l21pscreview@ifpte21.org); [Conner, Brett \(CHF\)](mailto:Conner,Brett@CHF); [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator@DHR)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 49568 - 22/23  
**Date:** Friday, January 20, 2023 2:46:02 PM

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RECEIPT for Union Notification for PSC 49568 - 22/23 more than \$100k

The CHILDREN; YOUTH & THEIR FAMILIES -- CHF has submitted a request for a Personal Services Contract (PSC) 49568 - 22/23 for \$25,500,000 for Initial Request services for the period 07/01/2023 – 06/30/2029. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19784> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Technical Assistance and Capacity Building Services for City Funded Programs

Funding Source: Children and Youth Fund

PSC Amount: \$20,000,000

PSC Est. Start Date: 07/01/2018

PSC Est. End Date 06/30/2023

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

This request is for professional technical assistance and capacity building for department grant-funded nonprofit programs providing services to children, youth and their families. Technical assistance and capacity building will be provided broadly to address issues of program quality and administrative capability.

B. Explain why this service is necessary and the consequence of denial:

The department expects to support hundreds of nonprofit programs providing services to children and youth over the coming five-year funding cycle. The San Francisco City Charter maintains "Technical assistance and capacity-building for service providers and community-based partners" as designated uses of the Children and Youth Fund in recognition of the importance of providing dedicated, ongoing support to the nonprofits working in service to the city's most vulnerable citizens.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The department has provided these services continuously over many years as part of normal support activities. Most recently they operated under PSC 4041 - 12/13.

D. Will the contract(s) be renewed?

Contracts will not be renewed following the end of the new funding cycle on June 30, 2023.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

In November 2014 the voters of San Francisco approved Proposition C, which extended the Children and Youth Fund for another 25 years. An additional component of this legislation increased the length of the department's grant cycle to five years. The department wishes to establish a PSC for these services to cover the entire 2018-2023 cycle.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

B. Explain the qualifying circumstances:

The technical assistance work performed for the department occurs intermittently over the course of the funding cycle. There are times of significant activity followed by extended lulls.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Subject matter expertise in: early care & education; out of school time; educational support; enrichment, leadership & skill building; justice services; youth workforce development; mentorship; emotional well-being; and family empowerment; In-depth knowledge of the youth services sector both locally and nationally; Understanding of the elements necessary for a successful youth program; Expertise in nonprofit management, including fiscal practices, resource development, leadership, and governance; Ability to provide one on one coaching, group trainings and cohort convenings
- B. Which, if any, civil service class(es) normally perform(s) this work? 9772, Community Development Spec; 9774, Sr. Community Devl Spc 1; 9775, Sr Community Dev Spec 2;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City does not maintain sufficient skilled resources to meet the department's need.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The department utilizes civil service classes in the 9700 Community Development Specialist series for the ongoing monitoring and administration of grants. However these classes do not have the capacity to provide technical assistance at scale over a five-year period. In addition, due to the sensitive nature of some technical assistance engagements an independent third party is required. The department has historically relied upon contractors for these services.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No; the scale and breadth of the services required do not lend themselves to civil service classes.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. Staff training is not part of the scope of the department's capacity building contracts.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes. It is not known at this time which contractors will be providing these services in the next funding cycle. It is possible that some current suppliers will successfully apply to the RFQ and ultimately be awarded contracts.

**7. Union Notification: On 11/22/2017, the Department notified the following employee organizations of this PSC/RFP request:  
Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21; SEIU 1021 Miscellaneous; SEIU Local 1021**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Brett Conner Phone: 628-652-7109 Email: brett.conner@dcyf.org

Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 46296 - 17/18

DHR Analysis/Recommendation:

action date: 04/02/2018

Commission Approval Required

Approved by Civil Service Commission

04/02/2018 DHR Approved for 04/02/2018

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES -- CHF

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Evaluation of City Funded Programs

Funding Source: Children and Youth Fund

PSC Amount: \$13,500,000

PSC Est. Start Date: 07/01/2018

PSC Est. End Date 06/30/2023

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

This request is for professional evaluation of the department's grant-funded programs providing services to children, youth and their families. Evaluation services will measure the quality of services provided and the effectiveness of programs and inform strategic planning with respect to the department's goals listed in our authorizing legislation and results identified through the department's planning process.

B. Explain why this service is necessary and the consequence of denial:

The department expects to support hundreds of nonprofit programs providing services to children and youth over the coming five-year funding cycle. Section 16.108 of the San Francisco City Charter states the department "shall provide for the evaluation on a regular basis of all services funded through the [Children and Youth] Fund, and shall prepare on a regular basis an Evaluation and Data Report for the Oversight and Advisory Committee." If denied, the department will not be in compliance with the evaluation requirement mandated in the Charter.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The department has engaged evaluation service providers continuously over many years as part of its normal operations. Most recently the services were provided under PSC 4041 - 12/13.

D. Will the contract(s) be renewed?

Contracts will not be renewed following the end of the new funding cycle on June 30, 2023.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

In November 2014 the voters of San Francisco approved Proposition C, which extended the Children and Youth Fund for another 25 years. An additional component of this legislation increased the length of the department's grant cycle to five years. The department wishes to establish a PSC for these services to cover the entire 2018-2023 cycle.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

B. Explain the qualifying circumstances:

The evaluation work performed under the PSC occurs intermittently over the course of the five-year funding cycle. There are times of significant activity followed by extended lulls. In addition, third-party evaluation of our grants eliminates the perception of any conflict of interest between department staff and its grantees. These relationships are by necessity very close, with staff constantly striving for supportive, positive connections to those nonprofits receiving funding. Independent, objective appraisal of grant-support work is most reliably done at arm's length by a disinterested party.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Data matching and manipulation of large data sets; survey work, including design, administration, collection and analysis; mixed-methods evaluation of youth development and capacity building, technical assistance and professional development services; strategic planning; stakeholder facilitation.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1822, Administrative Analyst; 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 1825, Prnpl Admin Analyst II;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Evaluation is not normally performed by a civil service class at the department. However, the planning and oversight of these services are managed by staff in the 1824 and 1825 Administrative Analyst series.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The department uses staff in the 1800 Administrative Analyst series to analyze grants, but the skill set required for the analyst position is not the same as that used by a professional evaluator. In addition, the close monitoring relationship between grantees and department staff introduces the potential for bias into an evaluation and could bring into question its integrity. The department has historically relied upon contractors for these services.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, evaluations of the magnitude required by the City Charter should be conducted by an independent body.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. Staff training is not part of the scope of the department's evaluation contracts.
- C. Are there legal mandates requiring the use of contractual services?  
Yes. While not a legal mandate, the City Charter states: "Subject to the budgetary and fiscal provisions of the Charter, DCYF may contract with consultants and outside experts for such services as the department may require to conduct such evaluations and to prepare the Evaluation and Data Report."
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department?  
If so, please explain.  
Yes. It is not known at this time what contractors will be providing these services in the next funding cycle. It is possible that some current contractors will successfully apply to the RFQ and ultimately be awarded contracts.

7. **Union Notification:** On 11/22/2017, the Department notified the following employee organizations of this PSC/RFP request:  
Management & Superv Local 21; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21; Professional & Tech Engrs, SFAPP

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Brett Conner Phone: 628-652-7109 Email: brett.conner@dcyf.org

Address: 1390 Market Street, Suite 900 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 44694 - 17/18

DHR Analysis/Recommendation:

action date: 04/02/2018

Commission Approval Required

Approved by Civil Service Commission

04/02/2018 DHR Approved for 04/02/2018



PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CHILDREN; YOUTH & THEIR FAMILIES

Dept. Code: CHF

Type of Request:  Initial  Modification of an existing PSC (PSC # 4041 12/13)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Evaluation and Technical Assistance for city funded programs serving children and youth

Funding Source: Children's Fund

PSC Original Approved Amount: \$4,000,000 PSC Original Approved Duration: 11/01/12 - 06/30/16 (3 years 34 weeks)

PSC Mod#1 Amount: \$3,000,000 PSC Mod#1 Duration: 07/01/16-06/30/18 (2 years)

PSC Cumulative Amount Proposed: \$7,000,000 PSC Cumulative Duration Proposed: 5 years 34 weeks

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

This request is for professional evaluation and technical assistance for DCYF grant-funded programs providing services to children, youth and their families. Evaluation services will measure the quality of services provided and the effectiveness of programs with respect to the department's strategic goals. As needed, technical assistance will be provided to address issues of program quality. Contractors conducting evaluation may differ from contractors providing technical assistance.

**B. Explain why this service is necessary and the consequence of denial:**

DCYF administers over four hundred grants to nonprofit agencies to provide services to children and youth. Grants are funded in a 3-year funding cycle with Children's Fund dollars. The Children's Service Allocation Plan is mandated by the Children's Amendment. Evaluation services are a requirement of the plan. Item J in the Children's Amendment states:

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

This service was approved in the original PSC 4041 12/13

**D. Will the contract(s) be renewed?**

No. Request is for the funding cycle ending June 30, 2016.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

In November 2014 the voters of San Francisco approved Proposition C, which extended the Children and Youth Fund (formerly the Children's Fund) for another 25 years. An additional component of this legislation extended the department's grant cycle from three to five years.

**2. Reason(s) for the Request**

**A. Display all that apply**

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

**Explain the qualifying circumstances:**

The evaluation and technical assistance work performed under the PSC occurs intermittently over the course of the funding cycle. There are times of significant activity followed by extended lulls. In addition, third-party evaluation of our grants eliminates the perception of any conflict of interest between the DCYF staff and our grantees. These relationships are by necessity very close, with staff constantly striving for supportive, positive connections to those nonprofits receiving funding. Independent, objective appraisal of the work supported by our grants is most reliably done at arm's length by a disinterested party.

**B. Reason for the request for modification:**

In November 2014 the voters of San Francisco approved Proposition C, which extended the Children and Youth Fund (formerly the Children's Fund) for another 25 years. An additional component of this legislation extended the department's grant cycle from three to five years. When this PSC was created it was designed to be in place for the entire grant cycle. This modification adds two additional years to encompass our new five-year cycle. It also adds funds for the evaluation and technical assistance activities in the added two years.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Evaluation: Ability to develop an evaluation plan; knowledge of qualitative & quantitative research methods; ability to collect data & work with large disparate data sets; knowledge of IRB process & laws protecting confidentiality, ability to analyze & interpret data & make recommendations to improve program quality & increase the impact of evaluation investment. Technical assistance: Expertise in nonprofit management, including fiscal practices & governance; ability to provide one on one coaching & group trainings
- B. Which, if any, civil service class(es) normally perform(s) this work? 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 9772, Community Development Spec; 9774, Sr. Community Devl Spc 1;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
DCYF uses 9772s & 9774s to monitor grants, but the skill set required for the program officer position is not the same skills used by an evaluator. In addition, the close monitoring relationship between grantees & DCYF staff introduces the potential for bias into an evaluation & could bring into question the integrity of the evaluation.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, evaluations of the magnitude required by the Children's Amendment should be conducted by an independent body.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
How to conduct observations. Hours will vary based on need.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Existing contracts will likely be extended for two years

**7. Union Notification: On 10/23/15, the Department notified the following employee organizations of this PSC/RFP request: SEIU Local 1021; Management & Superv Local 21;**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Deedra Jackson Phone: 415-554-9329 Email: deedra@dcyf.org

Address: 1390 Market Street, Suite 900, San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 4041 12/13

DHR Analysis/Recommendation:

02/01/2016

Commission Approval Required

Approved by Civil Service Commission

02/01/2016 DHR Approved for 02/01/2016

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Subscription and Advisory Services

Funding Source: General Fund

PSC Duration: 5 years

PSC Amount: \$18,000,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Contractor(s) shall provide the City and County of San Francisco (the City) with unrestricted access to the following non-exhaustive list of types of technology research services: proprietary research and analysis about technology related trends; data and analytics; development and delivery; infrastructure and operations; sourcing and vendor management; strategy; change management; mission-critical solutions; security and risk; and enterprise architecture. These services are provided through access to online content in the form of research, technology-related data, best practice tools, training materials, and advisory.

B. Explain why this service is necessary and the consequence of denial:

The technology-related research and advisory services are essential to the City's technology functions. The City's technology managers need to gain access to the latest proprietary data and research in order to ensure that the City has technology that is up-to-date and that is adequately secure in lieu of the ongoing cybersecurity attacks. Without access to the requested technology-related research and advisory services, City technology managers will not be able to make well-informed technology related decisions based on proven research, data, industry standards, and best practices for their specific projects, which in turn will negatively affect the City overall. The City needs to make strategic technology purchasing decisions in order to ensure that the City is remaining competitive, relevant, and proactive in regard to technology development/advancement and cyber security risk abatement measures.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services were previously provided under PSC #47642 - 18/19, attached.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

This request is to replace the approved PSC #43734 - 21/22, attached, which was approved by CSC on 05/16/22 and is about to expire on 05/16/23. There was a delay in creating a new contract for the approved PSC #43734 - 21/22 due to changing of staff at the Office of Contract Administration.

The City doesn't have the resources or the expertise to conduct large scale, global technology-related research and analysis. And the services required are sporadic.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: In order to adequately provide the City with the requested access to online content pertaining to technology research and advisory services, the contractor must have expertise in conducting large scale technology-related research and analysis on technology trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1044, IS Engineer-Principal; 1054, IS Business Analyst-Principal; 1070, IS Project Director;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: The contractor shall provide the City access to online content with technology research and advisory services.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City doesn't have the resources or the expertise to perform the work, and the services required are sporadic.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable. The City doesn't have the resources or the expertise to conduct large scale, global technology-related research and analysis. And the services required are sporadic.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the City doesn't have the resources or the expertise to conduct large scale, global technology-related research and analysis. And the services required are sporadic.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation. No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not. No. No training will be provided.
- C. Are there legal mandates requiring the use of contractual services? No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement. No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 02/15/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Prof & Tech Eng, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430, 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 42038 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

**From:** [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) on behalf of [lynn.khaw@sfgov.org](mailto:lynn.khaw@sfgov.org)  
**To:** [Khaw, Lynn \(ADM\); ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; Khaw, Lynn \(ADM\); DHR-PSCCoordinator, DHR \(HRD\)](mailto:Khaw, Lynn (ADM); ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; Khaw, Lynn (ADM); DHR-PSCCoordinator, DHR (HRD))  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 42038 - 22/23  
**Date:** Wednesday, February 15, 2023 6:09:23 PM

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RECEIPT for Union Notification for PSC 42038 - 22/23 more than \$100k

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a request for a Personal Services Contract (PSC) 42038 - 22/23 for \$18,000,000 for Initial Request services for the period 07/01/2023 – 06/29/2028. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19908> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended



# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Subscription and Advisory Services

Funding Source: General Fund

PSC Duration: 5 years

PSC Amount: \$18,000,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Contractor(s) shall provide the City and County of San Francisco (the City) with unrestricted access to the following non-exhaustive list of types of technology research services: proprietary research and analysis about technology related trend; data and analytics; development and delivery; infrastructure and operations; sourcing and vendor management; strategy; change management; mission-critical solutions; security and risk; and enterprise architecture. These services are provided through access to online content in the form of research, technology related data, best practice tools, training materials, and advisory.

B. Explain why this service is necessary and the consequence of denial:

The technology-related research and advisory services are essential to the City's technology functions. The City's technology managers need to gain access to the latest proprietary data and research in order to ensure that the City has technology that is up-to-date and that is adequately secure in lieu of the ongoing cybersecurity attacks. Without access to the requested technology-related research and advisory services, City technology managers will not be able to make well-informed technology related decisions based on proven research, data, industry standards, and best practices for their specific projects, which in turn will negatively affect the City overall. The City needs to make strategic technology purchasing decisions in order to ensure that the City is remaining competitive, relevant, and proactive in regards to technology development/advancement and cyber security risk abatement measures.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The services were previously provided under the PSC #47642 - 18/19, attached.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.  
not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

- Short-term or capital projects requiring diverse skills, expertise and/or knowledge.
- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

No, the City doesn't have resources or the expertise to conduct large scale, global technology-related research and analysis. And the services required are sporadic.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: In order to adequately provide the City with the requested access to online content pertaining to technology research and advisory services, the contractor must have expertise in conducting large scale technology-related research and analysis on technology trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1044, IS Engineer-Principal; 1054, IS Business Analyst-Principal; 1070, IS Project Director;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: The contractor shall provide the City access to online content with technology research and advisory services.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City doesn't have resources or the expertise to perform the work, and the services required are sporadic.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The City doesn't have resources or the expertise to conduct large scale, global technology-related research and analysis. And the services required are sporadic.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the City doesn't have resources or the expertise to conduct large scale, global technology-related research and analysis. And the services required are sporadic.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. No training will be provided.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 03/21/2022, the Department notified the following employee organizations of this PSC/RFP request:  
Prof & Tech Eng, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430 San Francisco, CA

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 43734 - 21/22

DHR Analysis/Recommendation:

action date: 05/16/2022

Commission Approval Required

Approved by Civil Service Commission

05/16/2022 DHR Approved for 05/16/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN

Dept. Code: ADM

Type of Request:  Initial  Modification of an existing PSC (PSC # 47642 - 18/19)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Advisory services on proprietary published data and data

Funding Source: Departments using contract will determine

PSC Original Approved Amount: \$5,000,000 PSC Original Approved Duration: 05/01/19 - 04/30/22 (3 years)

PSC Mod#1 Amount: no amount added PSC Mod#1 Duration: 02/14/22-07/31/22 (13 weeks 1 day)

PSC Mod#2 Amount: \$2,500,000 PSC Mod#2 Duration: 07/31/22-10/31/23 (1 year 13 weeks)

PSC Cumulative Amount Proposed: \$7,500,000 PSC Cumulative Duration Proposed: 4 years 26 weeks

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

In February 2019, the City and County of San Francisco's Office of Contract Administration (OCA) issued a Request for Proposals (RFP) seeking proposals from research and advisory companies that publish and provide online access to their proprietary research and analysis about to technology-related trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture. Optionally, proposers could also offer limited advisory services and would enable technology managers to request more in-depth and customized data, research and analysis related specifically to their business needs.

OCA now seeks to execute a contract with the entities selected pursuant to its RFP for a term of three years. Under these contracts, City departments can subscribe to each proposers' proprietary research and data, as well as certain advisory service related thereto. The combined not to exceed value of such advisory services shall not exceed \$5,000,000 over three years.

B. Explain why this service is necessary and the consequence of denial:

The technology-related research and advisory services offered by these companies enables City technology managers to gain access to proprietary data and research to which they would not otherwise have access. Without the aid of such advisory services, City technology managers cannot make well-informed technology related decisions based on proven research, data, industry standards and best practices related specifically to their projects.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47642 - 18/19

D. Will the contract(s) be renewed?

At this time, OCA does not anticipate that the two contracts will be renewed. However, we will issue a new RFP prior to each contract's expiration date so as to ensure new term contracts are in place with entities that can provide the types of technology-related research and data such as those selected pursuant to this RFP.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

**2. Reason(s) for the Request**

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

City employees do not have the expertise required in conducting large scale technology related research and analysis on technology trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture.

B. Reason for the request for modification:

Adding amount and duration.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Expertise is required in conducting large scale technology-related research and analysis on technology trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture.

B. Which, if any, civil service class(es) normally perform(s) this work? 1054, IS Business Analyst-Principal; 1070, IS Project Director;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Although City employees could theoretically conduct their own research and data gathering, they would not possess either the resources or the expertise required to conduct large scale, global technology-related research and analysis on the subject matters described herein.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. although City employees could theoretically conduct their own research and data gathering, they would not possess either the resources or the expertise required to conduct large scale, global technology-related research and analysis on the subject matters described herein

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No training will be provided.

C. Are there legal mandates requiring the use of contractual services?  
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 05/20/22, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: One Dr. Carlton B. Goodlett Place Room 362, San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47642 - 18/19

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 06/01/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Advisory services on proprietary published data and data

Funding Source: Departments using contract will determine PSC Duration: 3 years

PSC Amount: \$5,000,000

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

In February 2019, the City and County of San Francisco's Office of Contract Administration (OCA) issued a Request for Proposals (RFP) seeking proposals from research and advisory companies that publish and provide online access to their proprietary research and analysis about to technology-related trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture. Optionally, proposers could also offer limited advisory services and would enable technology mangers to request more in-depth and customized data, research and analysis related specifically to their business needs.

OCA now seeks to execute a contract with the entities selected pursuant to its RFP for a term of three years. Under these contracts, City departments can subscribe to each proposers' proprietary research and data, as well as certain advisory service related thereto. The combined not to exceed value of such advisory services shall not exceed \$5,000,000 over three years.

**B. Explain why this service is necessary and the consequence of denial:**

The technology-related research and advisory services offered by these companies enables City technology managers to gain access to proprietary data and research to which they would not otherwise have access. Without the aid of such advisory services, City technology managers cannot make well-informed technology related decisions based on proven research, data, industry standards and best practices related specifically to their projects.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

No.

**D. Will the contract(s) be renewed?**

At this time, OCA does not anticipate that the two contracts will be renewed. However, we will issue a new RFP prior to each contract's expiration date so as to ensure new term contracts are in place with entities that can provide the types of technology-related research and data such as those selected pursuant to this RFP.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**  
not applicable



**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

City employees do not have the expertise required in conducting large scale technology related research and analysis on technology trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Expertise is required in conducting large scale technology-related research and analysis on technology trends and predictions, data and analytics, development and delivery, infrastructure and operations, sourcing and vendor management, strategy, change management, mission-critical solutions, security and risk, and enterprise architecture.

B. Which, if any, civil service class(es) normally perform(s) this work? 1054, IS Business Analyst-Principal; 1070, IS Project Director;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:  
No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City does not possess either the resources or the expertise required to conduct large scale, global technology-related research and analysis on the subject matters described herein.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Although City employees could theoretically conduct their own research and data gathering, they would not possess either the resources or the expertise required to conduct large scale, global technology-related research and analysis on the subject matters described herein.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. although City employees could theoretically conduct their own research and data gathering, they would not possess either the resources or the expertise required to conduct large scale, global technology-related research and analysis on the subject matters described herein

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. No training will be provided.

C. Are there legal mandates requiring the use of contractual services?  
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 03/25/2019, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Dr. Carlton B. Goodlett Place Room 362 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47642 - 18/19

DHR Analysis/Recommendation:

action date: 05/06/2019

Commission Approval Required

Approved by Civil Service Commission

05/06/2019 DHR Approved for 05/06/2019

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Development of Digital Workflow System

Funding Source: Work orders from departments

PSC Duration: 2 years

PSC Amount: \$250,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Permit Center seeks professional services to implement a streamlined and digital workflow solution, including data collecting and sharing. The professional services will configure and implement an inspection scheduler and workflow tool to digitize, streamline, and automate the inspection processes involving multiple inspecting departments. The tool will allow customers to schedule on-site inspections and collect data from the applicant prior to arrival. The workflow tool also allows multiple departments to access and view the data, make updates to the data prior to inspection, and allows departments to collect and record new data during the mobile inspection process. The services will provide a technology solution that provides an integrated and complete digital workflow. The solution will also be scalable to other use cases across multiple permitting and inspection services across the Permit Center.

B. Explain why this service is necessary and the consequence of denial:

Current workflows rely on manual scheduling and data collection. Duplicate data is often captured and recorded on disparate systems that are unable to share data across multiple platforms. Current technology products used by departments are not scalable and lack the ability to integrate data across the entire workflow. Technical expertise is needed for a new technology product that streamlines a digital workflow across disparate data systems.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services have not been provided in the past. Departments rely on single channel technology products or rely on custom built solutions that are not scalable. Data integrations are either not technologically feasible or are too costly to scale to other use cases. Solutions for each portion of the workflow exist, but current solutions do not integrate and share data across the workflow journey. Products are siloed across the entire workflow and require manual transfer of data.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.  
not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

- B. Explain the qualifying circumstances:  
The vendor will set up the system using specialized skills.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Consulting expertise in digital workflow technology solutions and products. Ability to configure a technology solution to meet City use case requirements expertise is required, including a certified salesforce administrator to configure the application to current workflows, a Mulesoft Certified Developer to write and maintain integrations with existing data platforms and systems.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1044, IS Engineer-Principal; 1054, IS Business Analyst-Principal; 1064, IS Prg Analyst-Principal;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Technical resources with subject matter expertise do not exist in the City. There are no resources with the necessary certification and training available for this work.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Technical resources with subject matter expertise do not exist in the City. There are no resources with the necessary certification and training available for this work.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. This engagement is a one-time project. The Permit Center is a working to hire a position that could fill the technical needs for salesforce configuration and integration.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. Knowledge transfer for maintenance to technical resources will occur. Continued maintenance of software package will be performed by Permit Center staff.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 02/20/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place Room 362 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 43644 - 22/23

DHR Analysis/Recommendation:  
Commission Approval Required  
DHR Approved for 04/17/2023

Civil Service Commission Action:

# **Receipt of Union Notification(s)**

## Lubamersky, Joan (ADM)

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**From:** dhr-psccordinator@sfgov.org on behalf of joan.lubamersky@sfgov.org  
**Sent:** Monday, February 20, 2023 11:21 AM  
**To:** Lubamersky, Joan (ADM); ewidth@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscview@ifpte21.org; Lubamersky, Joan (ADM); DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 43644 - 22/23

RECEIPT for Union Notification for PSC 43644 - 22/23 more than \$100k

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a request for a Personal Services Contract (PSC) 43644 - 22/23 for \$250,000 for Initial Request services for the period 05/01/2023 – 04/30/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19946> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Electric vehicle charging dispensers as-needed maintenance services

Funding Source: General Fund

PSC Duration: 5 years 1 day

PSC Amount: \$300,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Currently, the City and County of San Francisco has a number of electric vehicle charging dispensers, or electric vehicle supply equipment ("EVSE"), which are proprietary devices. The EVSE is integrated with a patented software interface. The contracted services will cover maintenance of proprietary software, wireless network upkeep and monitoring, customized programming, quarterly energy use reporting, security patches, remote monitoring, onsite troubleshooting and repairs, notification services for outages and other issues identified remotely, visual inspection of charging units, unit cables and the load management controller oversight, and onsite hardware and software maintenance.

B. Explain why this service is necessary and the consequence of denial:

Due to the specific expertise and intellectual property rights held by the vendor, multiple features and the long-term performance of the equipment will not be available to the City if the vendor is not engaged to perform services. Software updates, code fixes, or security patches for the hardware and software cannot occur, exposing the electric vehicle supply equipment ("EVSE") to external threats, programming faults, and depleting functions. Onsite administrators will not have access to electricity usage and vehicle analytics that illustrate load management. Automated communications for error codes in the hardware and software cannot alert a service person for emergency, proactive, or regular maintenance. Replacement parts remain unobtainable when hardware fails, shortening the EVSE's life. System failure will be unavoidable, leading to fleet vehicles unable to be powered by green energy provided by the City, hindering the City's ability to meet environmental standards for electric vehicles.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services were provided, first, under warranty and, later, using other City procurement methods. RED has been advised to request a Personal Services Contract

D. Will the contract(s) be renewed?

Unknown.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The contract is for 5 years, but due to leap year, the system shows 5 years and 1 day.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.



Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:  
Proprietary services.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Both code programming and physical hardware as well as the integrated user interface are the vendor's sole intellectual property. Proprietary knowledge, secret processes, and undisclosed training to facilitate the dispenser's ongoing maintenance and upkeep needs are provided to the vendor's staff after employment.

B. Which, if any, civil service class(es) normally perform(s) this work? 1041, IS Engineer-Assistant; 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1062, IS Programmer Analyst; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal; 9976, 9976;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contractor will provide replacement parts and equipment as the sole proprietor.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

It is not possible to obtain these services within the City because of the proprietary status of the electric vehicle charging solution that is already installed at multiple locations.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Service is proprietary and City employees do not have access. Skillsets necessary to provide a digital backend infrastructure to integrate specific proprietary equipment and perform necessary maintenance or upgrades on electric vehicle supply equipment are not included in current civil service classifications.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. The possibility of patent, secret processes, and copyright violations prevent the City and County of San Francisco from seeking these services through other avenues such as new civil service classifications. Additionally, the creation of new classes to establish a charging solution for the City fleet and provide continuous maintenance is financially and professionally impractical at this juncture because it would require a volume of specialized engineers and code designers to create a new solution and remove the existing system.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

No. One (1) hour of user-end software utilization training may be provided to 0922, 0923, 0933, 1053, 1054, 1822, 1823, 1824, 1825, 1071, 1041-1044, 1092, 1093, 7334, 7205, 7335, 4142, 4143

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 02/19/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21; Municipal Executive Association

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place Room 362 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 44191 - 22/23

DHR Analysis/Recommendation:  
Commission Approval Required  
DHR Approved for 04/17/2023

Civil Service Commission Action:

# **Receipt of Union Notification(s)**

## Lubamersky, Joan (ADM)

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**From:** dhr-psccordinator@sfgov.org on behalf of joan.lubamersky@sfgov.org  
**Sent:** Sunday, February 19, 2023 12:53 AM  
**To:** Lubamersky, Joan (ADM); Laxamana, Junko (DBI); Criss@sfmea.com; camaguey@sfmea.com (contact); christina@sfmea.com; staff@sfmea.com; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscreview@ifpte21.org; Lubamersky, Joan (ADM); DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 44191 - 22/23

RECEIPT for Union Notification for PSC 44191 - 22/23 more than \$100k

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a request for a Personal Services Contract (PSC) 44191 - 22/23 for \$300,000 for Initial Request services for the period 06/01/2023 – 05/31/2028. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19941> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: As-Needed Crane Operator and Crane Services

Funding Source: General Fund

PSC Duration: 5 years

PSC Amount: \$4,600,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Contractor(s) to provide crane services to hoist materials, equipment, tools, and supplies from one location to another or to and from a roof. Services shall cover various scopes and complexity of the projects. The weight and type of the materials to be craned and the height and reach of the crane will need to be evaluated for each project. Contractors will provide cranes with certified operators that possess the required certifications based on the types of cranes and levels of expertise. The lifting capacities of cranes can range from 30 tons to 500 tons and heights from 25 feet to over 197 feet. Contract(s) will be available for all City departments where (1) departments do not have cranes and/or operators or (2) departments have a crane but do not have the right crane or certified operator or at times when the crane is out of service.

B. Explain why this service is necessary and the consequence of denial:

Important projects, such as maintenance and repairs of heating, ventilation, and air conditioning (HVAC) on rooftops of City buildings and facilities, required crane services. Examples are the HVAC equipment located at the San Francisco Public Library and the San Francisco Fire Department stations. The City does not have cranes to hoist equipment to and from rooftops. If these services are denied, projects in which a crane and crane operator are essential, and for which the specific crane and operator needs exceed the City's available equipment and staffing capacity, completion of these projects will not be possible. The essential projects will be stalled and cause disruption to City's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Crane operator and crane services were previously approved under PSC 35314 – 18/19 for San Francisco Public Works (SFPW). The Office of Contract Administration (OCA) will be creating a term contract for all City departments to use.

D. Will the contract(s) be renewed?

Yes, if services are continued to be required.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.  
not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

There are two Civil Service Classifications for crane services: 9354, Elevator and Crane Technician and 9358, Crane Mechanic Supervisor. However, these classifications do not have the required certifications needed to operate various types of cranes for the services requested. Also, services are required on an intermittent basis. All rentals of cranes come with certified operators. Contractors will not rent cranes without operators due to liability issues.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Crane operators must be certified by the National Commission for the Certification of Crane Operators (NCCCO). Certification requirements are based on categories of craning equipment and level of expertise in operating different types, weights, and sizes of cranes.

B. Which, if any, civil service class(es) normally perform(s) this work? 7108, Heavy Equip Ops Asst Sprv; 7110, Mobile Equipment Asst Sprv; 7208, Heavy Equipment Ops Sprv; 7328, Operating Engineer, Universal; 9331, Piledriver Engine Operator; 9354, Elevator and Crane Technician; 9358, Crane Mechanic Supervisor;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. Contractor(s) will provide cranes and certified operators.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

SFPW is contacted by City departments for repair and maintenance work throughout the year. It does not own cranes or have staff with the required certification to operate cranes. OCA is aware that San Francisco Public Utilities Commission (SFPUC) and San Francisco Port (Port) have cranes with operators. The SFPUC has a mobile crane, but such a crane cannot be used on rooftops. Cranes owned by these departments are for their specific use and are not available to other departments.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

There are two Civil Service Classifications for crane services: 9354, Elevator and Crane Technician and 9358, Crane Mechanic Supervisors. However, these classifications do not have the required certifications needed to operate various types of cranes for the services requested. The amount of work and types of cranes needed are unpredictable and based on specific project requirements. All crane rentals come with certified operators. Contractors will not rent cranes without operators due to liability issues.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. There are already two Civil Service Classifications for crane services. These classifications do not have the required certifications needed to operate various types of cranes for the services requested. Services are unpredictable and required on an intermittent basis. It is impractical or infeasible to keep up with various types of certification requirements.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation. No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. No training will be provided. Certifications are required to operate cranes.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 02/21/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Electrical Workers, Local 6; Operating Engineers, Local 3

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430, 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 45619 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**



**From:** [Khaw, Lynn \(ADM\)](#)  
**To:** [dtuttle@oe3.org](mailto:dtuttle@oe3.org); [oashworth@ibew6.org](mailto:oashworth@ibew6.org)  
**Cc:** [DHR-PSCCoordinator, DHR \(HRD\)](#)  
**Subject:** RE: Receipt of Notice for new PCS over \$100K PSC #45619 - 22/23  
**Date:** Tuesday, February 21, 2023 5:17:00 PM  
**Attachments:** [Memo to Local 6 and Local 3 Re resubmission of PSC #45619 22-23, 2-21-23.pdf](#)

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Dear David (Local 3) and Osha (Local 6),

Please be advised that the Office of Contract Administration (OCA) is resubmitting this PSC #45619 - 22-23 to increase the amount from \$2,300,000 to 4,600,000.

Please see the attached memo.

Sincerely,  
Lynn

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Lynn Khaw, CPPO, CPPB, C.P.M.  
Department's Personal Services Contract Coordinator  
Office of Contract Administration/Purchasing  
City and County of San Francisco  
(415) 554-6296 – Calls will be forwarded to mobile phone  
Email: [lynn.khaw@sfgov.org](mailto:lynn.khaw@sfgov.org)  
Webpage: <https://sfgov.org/oca/>

-----Original Message-----

From: [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) <[dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)> On Behalf Of [lynn.khaw@sfgov.org](mailto:lynn.khaw@sfgov.org)  
Sent: Tuesday, February 21, 2023 5:02 PM  
To: Khaw, Lynn (ADM) <[lynn.khaw@sfgov.org](mailto:lynn.khaw@sfgov.org)>; [dtuttle@oe3.org](mailto:dtuttle@oe3.org); [oashworth@ibew6.org](mailto:oashworth@ibew6.org); [khughes@ibew6.org](mailto:khughes@ibew6.org); Khaw, Lynn (ADM) <[lynn.khaw@sfgov.org](mailto:lynn.khaw@sfgov.org)>; DHR-PSCCoordinator, DHR (HRD) <[dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)>  
Subject: Receipt of Notice for new PCS over \$100K PSC # 45619 - 22/23

RECEIPT for Union Notification for PSC 45619 - 22/23 more than \$100k

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a request for a Personal Services Contract (PSC) 45619 - 22/23 for \$4,600,000 for Initial Request services for the period 04/18/2023 – 04/16/2028. Notification of

30

days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19473> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

**City and County of San Francisco**  
London N. Breed, Mayor



**Office of the City Administrator**  
Carmen Chu, City Administrator  
Sailaja Kurella, Director  
Office of Contract Administration/Purchasing

Via Email

## MEMORANDUM

Date: February 21, 2023

To: David Tuttle, Operating Engineers Local 3, [dtuttle@oe3.org](mailto:dtuttle@oe3.org)  
Osha Ashworth, Electrical Workers, Local 6, [oashworth@ibew6.org](mailto:oashworth@ibew6.org)

CC: [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)

**Re: Resubmission of PSC #45619 – 22/23 for As-Needed Crane Operator and Crane Services  
With increased amount to \$4,600,000 (from \$2,300,000)  
No change in the duration of 5 years**

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The Officer of Contract Administration (OCA) is resubmitting PSC #45619 – 22/23 for As-Needed Crane Operator and Crane Services with an increased amount of \$4,600,000. We are giving you a 30-day notification for this resubmission.

The reason for the increased amount is due to OCA changes in the awarding of the contracts. The solicitation consists of four aggregates and each will be evaluated and awarded separately. The two highest-ranking proposers will be awarded a contract for each aggregate, resulting in eight contracts. Due to this, the requested amount of \$2,300,000 will need to be doubled to \$4,600,000.

Should have any questions, please let me know at [lynn.khaw@sfgov.org](mailto:lynn.khaw@sfgov.org) or contact the Department of Human Resources, DHR-PSC coordinator at [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org).

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS

Dept. Code: DPW

Type of Request:  Initial  Modification of an existing PSC (PSC # 35314 - 18/19)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: As Needed Crane Operator and Crane Services

Funding Source: DPWS000795

PSC Original Approved Amount: \$100,000

PSC Original Approved Duration: 03/11/19 - 03/10/22 (3 years 1 hour)

PSC Mod#1 Amount: \$250,000

PSC Mod#1 Duration: 03/11/22-03/16/25 (3 years 6 days)

PSC Cumulative Amount Proposed: \$350,000

PSC Cumulative Duration Proposed: 6 years 1 week

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Crane services to hoist materials from one location to another or to and from a roof. Services will differ based on project scope and complexity of the project. The weight and type of the materials to be craned, and the height and reach of the crane will need to be evaluated for each project. As a result, different types of cranes and operator requirements will be utilized throughout the course of this PSC. For example, some project may require vendor to have crane specifications and lifting capacities of 90 tons, 140 feet of height and 58 feet of reach.

**Scope Change**

Add the following language to the original Description of Work: 'This contract shall be used exclusively for Crane Rental Services; no other services shall be utilized.'

B. Explain why this service is necessary and the consequence of denial:

The City and County of San Francisco, including SF Public Works, does not have a crane or a crane operator who can perform the work described above. If this PSC is denied, projects in which a crane and crane operator are essential for the completion of projects cannot be performed. Such project include the replacement of the Public Library's computer room cooling system.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, see original PSC 35314-1819 approval

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for such services.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Extend duration in anticipation of greater future usage two Contractors who were awarded the contract are Sheedy and Professional Tree Care. Bureau of Building Repair (BBR) is anticipating an increased need for craning/lifting/rigging services. We have a project with Human Services Agency (HAS) to replace the heating/cooling system on the roof of 1235 Mission that will need seven or eight lifts. We also have Roofers in BBR now and they often need crane services, sometimes on short notice if there is a roof leak. We also have been doing more solar roof projects also. The rising costs of construction also justify having a higher ceiling for this work. Other bureaus in Public Works may also need crane services from time to time.

**2. Reason(s) for the Request**

A. Display all that apply

- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

Services will be on an as-needed basis. Public Works is contacted by other City departments for repair and maintenance work throughout the year, and so cannot anticipate when equipment needs to be fixed, the cost, nor if crane services will be needed. If the services cannot be completed without crane services, Public Works will contact a vendor who can perform this type of work. The City lacks cranes to hoist things to and from roof tops.

B. Reason for the request for modification:

Increase the amount of the contract from \$100k to \$350K and extend duration, in anticipation of greater future usage. Bureau of Building Repair (BBR) is anticipating an increased need for craning/lifting/rigging services. We have a project with Human Services Agency (HAS) to replace the heating/cooling system on the roof of 1235 Mission that will need seven or eight lifts. We also have Roofers in BBR now and they often need crane services, sometimes on short notice if there is a roof leak. We also have been doing more solar roof projects also. The rising costs of construction also justify having a higher ceiling for this work. Other bureaus in Public Works (PW) may also need crane services from time to time.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Cranes are operated by operators certified by NCCCO (National Commission for the Certification of Crane Operators). The Department of Public Works does not have any employees who are certified to operate a crane, nor does it have cranes for employees to perform this task.
- B. Which, if any, civil service class(es) normally perform(s) this work? 7108, Heavy Equip Ops Asst Sprv; 7110, Mobile Equipment Asst Sprv; 7208, Heavy Equipment Ops Sprv; 7210, Mobile Equipment Supervisor; 7328, Operating Engineer, Universal; 9331, Piledriver Engine Operator;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The outside operator will provide a crane specific for the needs of the work to be done.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Civil classifications exist. 7108, 7110, 7208, 7210, 7221, 7328,730, 7424, 9331 under Operating Engineers Local Union No. 3. There is no one in these roles and the amount of work and type of crane needed is unpredictable.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Current classifications already exist and could be used, but have not because there is not enough work on a regular basis.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

Training will not be offered as this is a very specialized task that requires a crane operator certification.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Sheedy and Professional Tree Care awarded through RFP 70310

**7. Union Notification: On 07/09/20, the Department notified the following employee organizations of this PSC/RFP request:**

Operating Engineers, Local 3;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Alexander Burns Phone: 415-554-6411 Email: alexander.burns@sfdpw.org

Address: 1155 Market St. 4th floor, San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 35314 - 18/19

DHR Analysis/Recommendation:

09/21/2020

Commission Approval Required

Approved by Civil Service Commission

09/21/2020 DHR Approved for 09/21/2020

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: HUMAN SERVICES -- DSS

Dept. Code: DSS

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Time Study On line Module

Funding Source: Federal, State and Local

PSC Amount: \$800,000

PSC Est. Start Date: 07/01/2023

PSC Est. End Date 06/30/2027

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Provide web-based time study to HSA-DAS (Human Services Agency/Department of Aging and Disability Services) and HSH(San Francisco Department of Supportive Housing and Homelessness) service providers and internal HSA employees of over 1300 staff and fiscal administrators.

B. Explain why this service is necessary and the consequence of denial:

Time Study for County Services Block Grant (CSBG): the purpose of the contract is to assist HSA and HSH in implementing its Title XIX County Services Block Grant-Health Related (CSBG-HR) activities according to State and Federal Regulations. Through CSBG-HR, the Departments are able to leverage federal funding from Title XIX of the Social Security Act to partially reimburse the costs of performing medically-related activities for adult who have Medicaid(Medi-Cal) or who are eligible for it. The tools and consulting services funded through this contract will streamline time study reporting by HSA and HSH service providers and facilitate proper claiming of federal revenue. Time Study for Fiscal: the Purpose is to provide a web-based time study service for internal HSA employees that will assist the county with claiming employee time to a wide variety of programs and to all the agency's funders, including but not limited to, CA Department of Social Services, CA Department of Aging and the CalWIN Consortium. Time studies are the single largest component of the quarterly County expense claim to CDSS, distributing costs amount all the county's programs according to the hours reported. The claim is over \$100,000,000 each quarter and the time study program must accurately report the hours of over 1300 staff who are required to time study each quarter to maximize the amount of revenue returned. Accurate reports of time studies also are important for claims submitted to CalWIN, CDA and other funders. The Time Study is a web-based service that automates this process. Workers complete their time studies online and databases are automatically updated. This will help the workers prepare accurate time studies and help the Fiscal Office manage the entire process. This is web-based, therefore it requires no special computer hardware, software or maintenance. Denial would result in the lack of preparation and skills crucial to HSA employees and service Providers to submit the Time study on time as well as lost revenue to the City.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, previously provided by PSC.

D. Will the contract(s) be renewed?

Yes, based on funding, performance and procurement

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):



Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The City lacks the expertise in web based time study modules

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Skill set to create and maintain web-based applications with deep knowledge of the contracted systems and compliance mandates.

B. Which, if any, civil service class(es) normally perform(s) this work? 1053, IS Business Analyst-Senior; 1063, IS Programmer Analyst-Senior; 1823, Senior Administrative Analyst;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The Department has not made an effort to obtain through the City as these are highly specialized skills.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

The highly specialized skill set required for the development of web-based time study module is not captured under any current Civil Services Class.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the web-based time study module is highly specialized and would best be performed by an independent organization that has specific expertise with similar projects. Creating web based supportive systems for HSA and HSH is a very specialized service and the expertise to integrate, manage and support these systems requires specialized knowledge of the contracted system and compliance mandates. The web-based time study module is an integrated system this is used by other jurisdictions as well and is needed to communicate with other agencies to submit Time Study reports, which allows the City to collect funding from other agencies. Denial of such services would result in the lack of preparation and skills crucial to HSA employees and Community Based Organizations (CBO's) to submit the Time Study on time as well as lost revenue to the City

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. This is web-based tutorial training. No onsite or personalized training.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 01/13/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: johanna.gendelman Phone: 415-557-5507 Email: johanna.gendelman@sfgov.org

Address: 1650 Mission Street, Suite 500 San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48607 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

## Gendelman, Johanna (HSA)

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**From:** dhr-psccordinator@sfgov.org on behalf of johanna.gendelman@sfgov.org  
**Sent:** Friday, January 13, 2023 12:32 PM  
**To:** Gendelman, Johanna (HSA); Laxamana, Junko (DBI); WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; Gendelman, Johanna (HSA); DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 48607 - 22/23

RECEIPT for Union Notification for PSC 48607 - 22/23 more than \$100k

The HUMAN SERVICES -- DSS has submitted a request for a Personal Services Contract (PSC) 48607 - 22/23 for \$800,000 for Initial Request services for the period 07/01/2023 – 06/30/2027. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19760> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: HUMAN SERVICESDept. Code: DSS

Type of Request:  Initial  Modification of an existing PSC (PSC # 44952 - 17/18)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Time Study Online ModuleFunding Source: local, state and federal

PSC Original Approved Amount: \$660,000 PSC Original Approved Duration: 07/01/18 - 06/30/23 (5 years)

PSC Mod#1 Amount: \$41,250 PSC Mod#1 Duration: no duration added

PSC Cumulative Amount Proposed: \$701,250 PSC Cumulative Duration Proposed: 5 years

**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Provide web-based time study services to HSA-DAAS (Human Services Agency and Department of Aging and Adult Services) and SF-HSH (San Francisco Department of Homelessness and Supportive Housing) service providers and internal Human Services Agency employees of over 1300 staff and fiscal administrators.

**B. Explain why this service is necessary and the consequence of denial:**

Time Study for County Services Block Grant (CSBG): The purpose of this contract will be to assist the Human Services Agency's Department of Aging and Adult Services (DAAS) and the San Francisco Department of Homelessness and Supportive Housing (SF-HSH) in implementing its Title XIX County Services Block Grant-Health Related (CSBG-HR) activities according to State and Federal Regulations. Through CSBG-HR, the Departments are able to leverage federal funding from Title XIX of the Social Security Act to partially reimburse the costs of performing medically-related activities for adults who have Medicaid (Medi-Cal) or who are eligible for it. The tools and consulting services funded through this contract will streamline time study reporting by DAAS and SF-HSH service providers and facilitate proper claiming of federal revenue. Time Study for Fiscal: The purpose of this contract is to provide a web-based time study service for internal Human Services Agency employees that will assist the county with claiming employee time to a wide variety of programs and to all the agency's funders including but not limited to California Department of Social Services, California Department of Aging, and the CalWIN Consortium. Time studies are the single largest component of the quarterly County Expense Claim to CDSS, distributing costs among all the county's programs according to the hours reported. The claim is over \$100,000,000 each quarter and the time study program must accurately report the hours of the over 1300 staff who are required to time study each quarter to maximize the amount of revenue returned. Accurate reports of time studies are also important for claims submitted to CalWIN, CDA and other funders. The Time Study is a web-based service that automates the process. Workers complete their time studies online and databases are automatically updated. This will help the workers prepare accurate time studies and help the Fiscal Office to manage the entire process. This is web-based therefore it requires no special computer hardware, software or maintenance. Denial of such services would result in a lack of preparation

and skills crucial to HSA employees and CBOs to submit the Time Study on time as well as lost revenue to City.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.  
yes

D. Will the contract(s) be renewed?  
Yes, based upon funding, performance and procurement.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:  
For RFP 778, the contract agreement shall have a tentative term from July 1, 2018 to June 30, 2021. In addition, the City shall have the option to extend the term for a period of two (2) years, for a total of five (5) years, subject to annual availability of funds, annual satisfactory contractor performance, and need. HSA has the sole, absolute discretion to exercise this option, and reserves the right to enter into contract agreement of a shorter duration. In summary, the contract will have a term of three years, with the option to extend for two years, for a total of five years. The RFP is being issued because the previous contract expired.

## 2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Departments require a time-study module capable of keeping accurate records of community based organization staff time dedicated to CSBG-HR activities. These time studies are used to track the amount of time an employee spends performing those activities. The resulting proportion of time is reported to and then used by the Federal entity that oversees County Services Block Grant to determine the proportion of DAAS/DHS costs that are reimbursed. The Time Study is a web-based service that automates the process. Workers complete their time studies online and databases are automatically updated

B. Reason for the request for modification:

The requested modification will add additional funds to web-based time study services to HSA-DAAS (Human Services Agency and Department of Aging and Adult Services) and SF-HSH (San Francisco Department of Homelessness and Supportive Housing) service providers and internal Human Services Agency employees of over 1300 staff and fiscal administrators.

## 3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Skill set to create and maintain web based applications with knowledge of the contracted system and compliance mandates.

B. Which, if any, civil service class(es) normally perform(s) this work? 1053, IS Business Analyst-Senior; 1063, IS Programmer Analyst-Senior; 1823, Senior Administrative Analyst;

- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.

The highly specialized skill set required for the development of web-based time study module is not captured under any current civil service class.

- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. The web-based time study module project is highly specialized and would best to be performed by an independent organization that has specific expertise with similar projects. Creating web based supportive systems for the HSA is a very specialized service and the expertise to integrate, manage, and support these systems requires specialized knowledge of the contracted system and compliance mandates. It would not be feasible to adopt a civil service class to perform this work. The web-based time study module is an integrated system that is used by other jurisdictions as well and is needed to communicate with other agencies to submit Time Study reports, which allows the City to collect funding other agencies. Denial of such services would result in lack of preparation and skills crucial to HSA employees and CBOs to submit the Time Study on time as well as lost revenue to the City.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

This is web tutorial training. No onsite or personalized training.

- C. Are there legal mandates requiring the use of contractual services?

No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.



7. **Union Notification:** On 12/27/21, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Esperanza Zapien Phone: 557-5657 Email: esperanza.zapien@sfgov.org

Address: 1650 Mission Street, Suite 300,, San Francisco, CA

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 44952 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Not Required

Approved by DHR on 01/18/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Offsite Urine and Breath collection services

Funding Source: General Funds

PSC Duration: 5 years 1 day

PSC Amount: \$300,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

To provide an off-site facility to collect pre-employment, post-accident, return-to-duty, and reasonable suspicion breath and urine samples during normal working hours and/or after hours for San Francisco Municipal Transportation Agency (SFMTA) employees and contractors. Also, to provide a mobile on-site facility to collect random, follow-up, reasonable suspicion, and post-accident breath and urine samples in compliance with DOT/FTA Drug and Alcohol Testing Regulations.

B. Explain why this service is necessary and the consequence of denial:

Urine and breath collection is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) Rules. Denial of this service will jeopardize continued transit agency Federal funding assistance

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The service was provided in the past through, PSC # 4023-08/09 and PSC# 3034/08/09.

D. Will the contract(s) be renewed?

no

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Due to the ongoing FTA/DOT compliance requirement of services, a 5-year duration will provide the stability of services to the Agency.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

B. Explain the qualifying circumstances:

There is no plan to transition this work to the city. It would not be practical to adopt a new civil service class, because adopting a new civil service class may result in a recruitment and retention problem and consequently affect the required services under DOT/FTA rules and the city currently does not have the appropriate off-site facilities available for the administration of drug and alcohol testing services as regulated under the 49 CFR Part 40.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: The collection personnel must be trained in procedures designed to comply with 49 CFR Part 40, Subparts C and J, and shall demonstrate proficiency in complying with these procedures. Collection procedures for urine samples should be designed to comply with 49 CFR Subparts C, D, and E. The collection of breath samples must be designed to comply with 49 CFR Part 40, Subparts J, K, L, M, and N.
- B. Which, if any, civil service class(es) normally perform(s) this work? 2106, Med Staff Svcs Dept Spc; 2430, Medical Evaluations Assistant;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: The contractual services will include all necessary facilities and/or equipment for the collection of specimens and collection sites to be complaint with all requirements specified in 49 CFR Part 40, Subparts D and K. The firm selected must have the appropriate off-site facilities and personnel dedicated to the SFMTA's drug and alcohol testing program to provide a clean, secure and private environment

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

No, it would not be practical to adopt a new civil service class, because adopting a new civil service class may result in a recruitment and retention problem and consequently affect the required services under DOT/FTA rules. There are legal mandates (49 CFR Part 40) requiring contractors to meet specific standards and adhere to specific and time-sensitive regulatory requirements.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Civil service classes are not applicable because the knowledge and experience required for this type of work requires knowledge, experience and training related to the collection of urine and breath samples as specified by 49 CFR Part 40, Subpart C, D, E, J, K, L, M, and N. No civil service class performs this work.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class, because adopting a new civil service class may result in a recruitment and retention problem and consequently affect the required services under DOT/FTA rules as well as access to appropriate facilities and necessary equipment as required in the (49 CFR Part 40).

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. Training is not required

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 01/09/2023, the Department notified the following employee organizations of this PSC/RFP request:  
SEIU 1021 Miscellaneous

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, 6th Floor San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 46341 - 22/23

DHR Analysis/Recommendation:  
Commission Approval Required  
DHR Approved for 04/17/2023

Civil Service Commission Action:

# **Receipt of Union Notification(s)**

## **Nuque, Amy**

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**From:** DHR-PSCCoordinator, DHR (HRD) <dhr-psccoordinator@sfgov.org>  
**Sent:** Monday, January 9, 2023 11:47 AM  
**To:** Nuque, Amy  
**Subject:** FW: Receipt of Notice for new PCS over \$100K PSC # 46341 - 22/23

-----Original Message-----

**From:** dhrr-psccoordinator@sfgov.org <dhr-psccoordinator@sfgov.org> On Behalf Of amy.nuque@sfmta.com  
**Sent:** Monday, January 9, 2023 11:32 AM  
**To:** Nuque, Amy (MTA) <Amy.Nuque@sfmta.com>; Najuwanda Daniels <najuawanda.daniels@seiu1021.org>; Jason Klumb <Jason.Klumb@seiu1021.org>; Frigault, Noah (HRC) <noah.frigault@sfgov.org>; Julie.Meyers@sfgov.org; Thomas Vitale <thomas.vitale@seiu1021.org>; Ricardo.lopez@sfgov.org; Kbasconcillo@sfwater.org; pcamarillo\_seiu@sbcglobal.net; Wendy Frigillana <wendy.frigillana@seiu1021.org>; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; davidmkersten@gmail.com; xiumin.li@seiu1021.org; Sin.Yee.Poon@sfgov.org; david.canham@seiu1021.org; jtanner940@aol.com; Nuque, Amy (MTA) <Amy.Nuque@sfmta.com>; DHR-PSCCoordinator, DHR (HRD) <dhr-psccoordinator@sfgov.org>  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 46341 - 22/23

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 46341 - 22/23 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 46341 - 22/23 for \$300,000 for Initial Request services for the period 09/01/2023 -- 08/31/2028. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

[https://url.lavanan.click/v2/\\_\\_\\_http://apps.sfgov.org/dhrrupal/node/19733\\_\\_\\_YXAzOnNmZHQyOmE6bzpjMjU0OTJlMTBINGUwMDE5NGZiNDY1MzcxZWY5OTUwMzo2OjQ5MmWl6NzdhyZjJNTcyM2U5NmNlMzBkYTZkODQ2ODBJOWQ4Mk1MWEzM2lyNDAA0MmM4NjQwMGFjMzhizTMyMDZjYTBlMjpwOjIQ](https://url.lavanan.click/v2/___http://apps.sfgov.org/dhrrupal/node/19733___YXAzOnNmZHQyOmE6bzpjMjU0OTJlMTBINGUwMDE5NGZiNDY1MzcxZWY5OTUwMzo2OjQ5MmWl6NzdhyZjJNTcyM2U5NmNlMzBkYTZkODQ2ODBJOWQ4Mk1MWEzM2lyNDAA0MmM4NjQwMGFjMzhizTMyMDZjYTBlMjpwOjIQ) For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and

emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**



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This content is from the eCFR and is authoritative but unofficial.

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## Title 49 - Transportation

### Subtitle A - Office of the Secretary of Transportation

#### Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs

##### Subpart A Administrative Provisions

- § 40.1 Who does this regulation cover?
- § 40.3 What do the terms used in this part mean?
- § 40.5 Who issues authoritative interpretations of this regulation?
- § 40.7 How can you get an exemption from a requirement in this regulation?

##### Subpart B Employer Responsibilities

- § 40.11 What are the general responsibilities of employers under this regulation?
- § 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?
- § 40.14 What collection information must employers provide to collectors?
- § 40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?
- § 40.17 Is an employer responsible for obtaining information from its service agents?
- § 40.19 *[Reserved]*
- § 40.21 May an employer stand down an employee before the MRO has completed the verification process?
- § 40.23 What actions do employers take after receiving verified test results?
- § 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?
- § 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?
- § 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?
- § 40.29 Where is other information on employer responsibilities found in this regulation?

##### Subpart C Urine Collection Personnel

- § 40.31 Who may collect urine specimens for DOT drug testing?
- § 40.33 What training requirements must a collector meet?
- § 40.35 What information about the DER must employers provide to collectors?
- § 40.37 Where is other information on the role of collectors found in this regulation?

##### Subpart D Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

- § 40.41 Where does a urine collection for a DOT drug test take place?
- § 40.43 What steps must operators of collection sites take to protect the security and integrity

of urine collections?

§ 40.45 What form is used to document a DOT urine collection?

§ 40.47 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?

§ 40.49 What materials are used to collect urine specimens?

§ 40.51 What materials are used to send urine specimens to the laboratory?

#### Subpart E Urine Specimen Collections

§ 40.61 What are the preliminary steps in the collection process?

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

§ 40.65 What does the collector check for when the employee presents a specimen?

§ 40.67 When and how is a directly observed collection conducted?

§ 40.69 How is a monitored collection conducted?

§ 40.71 How does the collector prepare the specimens?

§ 40.73 How is the collection process completed?

#### Subpart F Drug Testing Laboratories

§ 40.81 What laboratories may be used for DOT drug testing?

§ 40.83 How do laboratories process incoming specimens?

§ 40.85 What drugs do laboratories test for?

§ 40.87 What are the cutoff concentrations for drug tests?

§ 40.89 What is validity testing, and are laboratories required to conduct it?

§ 40.91 What validity tests must laboratories conduct on primary specimens?

§ 40.93 What criteria do laboratories use to establish that a specimen is dilute or substituted?

§ 40.95 What are the adulterant cutoff concentrations for initial and confirmation tests?

§ 40.96 What criteria do laboratories use to establish that a specimen is invalid?

§ 40.97 What do laboratories report and how do they report it?

§ 40.99 How long does the laboratory retain specimens after testing?

§ 40.101 What relationship may a laboratory have with an MRO?

§ 40.107 Who may inspect laboratories?

§ 40.109 What documentation must the laboratory keep, and for how long?

§ 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

§ 40.113 Where is other information concerning laboratories found in this regulation?

#### Subpart G Medical Review Officers and the Verification Process

§ 40.121 Who is qualified to act as an MRO?

§ 40.123 What are the MRO's responsibilities in the DOT drug testing program?

§ 40.125 What relationship may an MRO have with a laboratory?

§ 40.127 What are the MRO's functions in reviewing negative test results?

§ 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug

test results?

§ 40.131 How does the MRO or DER notify an employee of the verification process after receiving laboratory confirmed non-negative drug test results?

§ 40.133 Without interviewing the employee, under what circumstances may the MRO verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid?

§ 40.135 What does the MRO tell the employee at the beginning of the verification interview?

§ 40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, semi-synthetic opioids, or PCP?

§ 40.139 On what basis does the MRO verify test results involving 6-acetylmorphine, codeine, and morphine?

§ 40.141 How does the MRO obtain information for the verification decision?

§ 40.143 [Reserved]

§ 40.145 On what basis does the MRO verify test results involving adulteration or substitution?

§ 40.147 [Reserved]

§ 40.149 May the MRO change a verified drug test result?

§ 40.151 What are MROs prohibited from doing as part of the verification process?

§ 40.153 How does the MRO notify employees of their right to a test of the split specimen?

§ 40.155 What does the MRO do when a negative or positive test result is also dilute?

§ 40.157 [Reserved]

§ 40.159 What does the MRO do when a drug test result is invalid?

§ 40.160 What does the MRO do when a valid test result cannot be produced and a negative result is required?

§ 40.161 What does the MRO do when a drug test specimen is rejected for testing?

§ 40.162 What must MROs do with multiple verified results for the same testing event?

§ 40.163 How does the MRO report drug test results?

§ 40.165 To whom does the MRO transmit reports of drug test results?

§ 40.167 How are MRO reports of drug results transmitted to the employer?

§ 40.169 Where is other information concerning the role of MROs and the verification process found in this regulation?

#### Subpart H Split Specimen Tests

§ 40.171 How does an employee request a test of a split specimen?

§ 40.173 Who is responsible for paying for the test of a split specimen?

§ 40.175 What steps does the first laboratory take with a split specimen?

§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?

§ 40.181 What does the second laboratory do with the split specimen when it is tested to

reconfirm a substituted test result?

**§ 40.183** What information do laboratories report to MROs regarding split specimen results?

**§ 40.185** Through what methods and to whom must a laboratory report split specimen results?

**§ 40.187** What does the MRO do with split specimen laboratory results?

**§ 40.189** Where is other information concerning split specimens found in this regulation?

### **Subpart I** Problems in Drug Tests

**§ 40.191** What is a refusal to take a DOT drug test, and what are the consequences?

**§ 40.193** What happens when an employee does not provide a sufficient amount of urine for a drug test?

**§ 40.195** What happens when an individual is unable to provide a sufficient amount of urine for a pre-employment follow-up or return-to-duty test because of a permanent or long-term medical condition?

**§ 40.197** What happens when an employer receives a report of a dilute specimen?

**§ 40.199** What problems always cause a drug test to be cancelled?

**§ 40.201** What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

**§ 40.203** What problems cause a drug test to be cancelled unless they are corrected?

**§ 40.205** How are drug test problems corrected?

**§ 40.207** What is the effect of a cancelled drug test?

**§ 40.208** What problem requires corrective action but does not result in the cancellation of a test?

**§ 40.209** What procedural problems do not result in the cancellation of a test and do not require correction?

**§ 40.210** Are drug tests other than urine permitted under the regulations?

### **Subpart J** Alcohol Testing Personnel

**§ 40.211** Who conducts DOT alcohol tests?

**§ 40.213** What training requirements must STTs and BATs meet?

**§ 40.215** What information about the DER do employers have to provide to BATs and STTs?

**§ 40.217** Where is other information on the role of STTs and BATs found in this regulation?

### **Subpart K** Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

**§ 40.221** Where does an alcohol test take place?

**§ 40.223** What steps must be taken to protect the security of alcohol testing sites?

**§ 40.225** What form is used for an alcohol test?

**§ 40.227** May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

**§ 40.229** What devices are used to conduct alcohol screening tests?

**§ 40.231** What devices are used to conduct alcohol confirmation tests?

**§ 40.233** What are the requirements for proper use and care of EBTs?

**§ 40.235** What are the requirements for proper use and care of ASDs?

### **Subpart L** Alcohol Screening Tests

§ 40.241 What are the first steps in any alcohol screening test?

§ 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

§ 40.247 What procedures does the BAT or STT follow after a screening test result?

#### Subpart M Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?

§ 40.253 What are the procedures for conducting an alcohol confirmation test?

§ 40.255 What happens next after the alcohol confirmation test result?

#### Subpart N Problems in Alcohol Testing

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

§ 40.267 What problems always cause an alcohol test to be cancelled?

§ 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

§ 40.271 How are alcohol testing problems corrected?

§ 40.273 What is the effect of a cancelled alcohol test?

§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

§ 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

#### Subpart O Substance Abuse Professionals and the Return-to-Duty Process

§ 40.281 Who is qualified to act as a SAP?

§ 40.283 How does a certification organization obtain recognition for its members as SAPs?

§ 40.285 When is a SAP evaluation required?

§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

§ 40.289 Are employers required to provide SAP and treatment services to employees?

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?

§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

**§ 40.303** What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?

**§ 40.305** How does the return-to-duty process conclude?

**§ 40.307** What is the SAP's function in prescribing the employee's follow-up tests?

**§ 40.309** What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

**§ 40.311** What are the requirements concerning SAP reports?

**§ 40.313** Where is other information on SAP functions and the return-to-duty process found in this regulation?

#### **Subpart P** Confidentiality and Release of Information

**§ 40.321** What is the general confidentiality rule for drug and alcohol test information?

**§ 40.323** May program participants release drug or alcohol test information in connection with legal proceedings?

*§ 40.325 [Reserved]*

**§ 40.327** When must the MRO report medical information gathered in the verification process?

**§ 40.329** What information must laboratories, MROs, and other service agents release to employees?

**§ 40.331** To what additional parties must employers and service agents release information?

**§ 40.333** What records must employers keep?

#### **Subpart Q** Roles and Responsibilities of Service Agents

**§ 40.341** Must service agents comply with DOT drug and alcohol testing requirements?

**§ 40.343** What tasks may a service agent perform for an employer?

**§ 40.345** In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

**§ 40.347** What functions may C/TPAs perform with respect to administering testing?

**§ 40.349** What records may a service agent receive and maintain?

**§ 40.351** What confidentiality requirements apply to service agents?

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## **Appendix A to Part 40**

DOT Standards for Urine Collection Kits

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DOT Drug-Testing Semi-Annual Laboratory Report to Employers

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DOT Drug-Testing Semi-Annual Laboratory Report to DOT

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## PART 40 - PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

**Authority:** 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

**Source:** 65 FR 79526, Dec. 19, 2000, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part 40 appear at 73 FR 33329, June 12, 2008.

### Subpart A - Administrative Provisions

#### § 40.1 Who does this regulation cover?

- (a) This part tells all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations how to conduct these tests and what procedures to use.
- (b) This part concerns the activities of transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents.
- (c) Nothing in this part is intended to supersede or conflict with the implementation of the Federal Railroad Administration's post-accident testing program (see 49 CFR 219.200).

#### § 40.3 What do the terms used in this part mean?

In this part, the terms listed in this section have the following meanings:

**Adulterated specimen.** A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

**Affiliate.** Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a public interest exclusion, an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Subpart R of this part.

**Air blank.** In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

**Alcohol.** The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.



**Alcohol concentration.** The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

**Alcohol confirmation test.** A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

**Alcohol screening device (ASD).** A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.

**Alcohol screening test.** An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

**Alcohol testing site.** A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

**Alcohol use.** The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

**Aliquot.** A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

**Breath Alcohol Technician (BAT).** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

**Cancelled test.** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

**Chain of custody.** The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget.

**Collection container.** A container into which the employee urinates to provide the specimen for a drug test.

**Collection site.** A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

**Collector.** A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

**Confirmatory drug test.** A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

**Confirmatory validity test.** A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

**Confirmed drug test.** A confirmation test result received by an MRO from a laboratory.

**Consortium/Third-party administrator (C/TPA).** A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of this part.

**Continuing education.** Training for substance abuse professionals (SAPs) who have completed qualification training and are performing SAP functions, designed to keep SAPs current on changes and developments in the DOT drug and alcohol testing program.

**Designated employer representative (DER).** An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

**Dilute specimen.** A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

**DOT, The Department, DOT Agency.** These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of this part, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes only since the USCG regulation does not incorporate Part 40 for its alcohol testing program. These terms include any designee of a DOT agency.

**Drugs.** The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids.

**Employee.** Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.

**Employer.** A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.

**Error Correction Training.** Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

**Evidential Breath Testing Device (EBT).** A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

- HHS.** The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.
- Initial drug test (also known as a "Screening drug test").** The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
- Initial specimen validity test.** The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.
- Invalid drug test.** The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.
- Invalid result.** The result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.
- Laboratory.** Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.
- Limit of Detection (LOD).** The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.
- Limit of Quantitation.** For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.
- Medical Review Officer (MRO).** A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
- Negative result.** The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.
- Non-negative specimen.** A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.
- Office of Drug and Alcohol Policy and Compliance (ODAPC).** The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.
- Oxidizing adulterant.** A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.
- Primary specimen.** In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.
- Positive result.** The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

**Qualification Training.** The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

**Reconfirmed.** The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

**Refresher Training.** The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

**Rejected for testing.** The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

**Screening drug test.** See Initial drug test definition above.

**Screening Test Technician (STT).** A person who instructs and assists employees in the alcohol testing process and operates an ASD.

**Secretary.** The Secretary of Transportation or the Secretary's designee.

**Service agent.** Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

**Shipping container.** A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

**Specimen bottle.** The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.

**Split specimen.** In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

**Split specimen collection.** A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

**Stand-down.** The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

**Substance Abuse Professional (SAP).** A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

**Substituted specimen.** A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

**Verified test.** A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 73 FR 35969, June 25, 2008; 75 FR 49861, Aug. 16, 2010; 76 FR 59577, Sept. 27, 2011; 80 FR 19553, Apr. 13, 2015; 81 FR 52365, Aug. 8, 2016; 82 FR 52243, Nov. 13, 2017]

### **§ 40.5 Who issues authoritative interpretations of this regulation?**

ODAPC and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of this part. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters. Only Part 40 interpretations issued after August 1, 2001, are considered valid.

### **§ 40.7 How can you get an exemption from a requirement in this regulation?**

- (a) If you want an exemption from any provision of this part, you must request it in writing from the Office of the Secretary of Transportation, under the provisions and standards of 49 CFR part 5. You must send requests for an exemption to the following address: Department of Transportation, Deputy Assistant General Counsel for Regulation and Enforcement, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- (b) Under the standards of 49 CFR part 5, we will grant the request only if the request documents special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impracticable.
- (c) If we grant you an exemption, you must agree to take steps we specify to comply with the intent of the provision from which an exemption is granted.
- (d) We will issue written responses to all exemption requests.

## **Subpart B - Employer Responsibilities**

### **§ 40.11 What are the general responsibilities of employers under this regulation?**

- (a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part.
- (b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
- (c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

### **§ 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?**

- (a) DOT tests must be completely separate from non-DOT tests in all respects.
- (b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.

- (c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.
- (d) The single exception to paragraph (c) of this section is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination (e.g., for glucose) on any urine remaining in the collection container after the drug test urine specimens have been sealed into the specimen bottles.
- (e) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
- (f) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.

#### **§ 40.14 What collection information must employers provide to collectors?**

As an employer, or an employer's service agent - for example a C/TPA, you must ensure the collector has the following information when conducting a urine specimen collection for you:

- (a) Full name of the employee being tested.
- (b) Employee SSN or ID number.
- (c) Laboratory name and address (can be pre-printed on the CCF).
- (d) Employer name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-A).
- (e) DER information required at § 40.35 of this part.
- (f) MRO name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-B).
- (g) The DOT Agency which regulates the employee's safety-sensitive duties (the checkmark can pre-printed in the appropriate box on the CCF at Step 1-D).
- (h) Test reason, as appropriate: Pre-employment; Random; Reasonable Suspicion/Reasonable Cause; Post-Accident; Return-to-Duty; and Follow-up.
- (i) Whether the test is to be observed or not (see § 40.67 of this part).
- (j) (Optional) C/TPA name, address, phone, and fax number (can be pre-printed on the CCF).

[75 FR 59107, Sept. 27, 2010]

### **§ 40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?**

- (a) As an employer, you may use a service agent to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations, consistent with the requirements of Subpart Q and other applicable provisions of this part.
- (b) As an employer, you are responsible for ensuring that the service agents you use meet the qualifications set forth in this part (e.g., § 40.121 for MROs). You may require service agents to show you documentation that they meet the requirements of this part (e.g., documentation of MRO qualifications required by § 40.121(e)).
- (c) You remain responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent. If you violate this part or other DOT drug and alcohol testing regulations because a service agent has not provided services as our rules require, a DOT agency can subject you to sanctions. Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
- (d) As an employer, you must not permit a service agent to act as your DER.

### **§ 40.17 Is an employer responsible for obtaining information from its service agents?**

Yes, as an employer, you are responsible for obtaining information required by this part from your service agents. This is true whether or not you choose to use a C/TPA as an intermediary in transmitting information to you. For example, suppose an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in your receipt of the test result from an MRO or C/TPA. You must not assume that "no news is good news" and permit the applicant to perform safety-sensitive duties before receiving the result. This is a violation of the Department's regulations.

### **§ 40.19 [Reserved]**

### **§ 40.21 May an employer stand down an employee before the MRO has completed the verification process?**

- (a) As an employer, you are prohibited from standing employees down, except consistent with a waiver a DOT agency grants under this section.
- (b) You may make a request to the concerned DOT agency for a waiver from the prohibition of paragraph (a) of this section. Such a waiver, if granted, permits you to stand an employee down following the MRO's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee.
  - (1) For this purpose, the concerned DOT agency is the one whose drug and alcohol testing rules apply to the majority of the covered employees in your organization. The concerned DOT agency uses its applicable procedures for considering requests for waivers.
  - (2) Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate the employer's other covered employees.

(3) The concerned DOT agency provides a written response to each employer that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.

(c) Your request for a waiver must include, as a minimum, the following elements:

(1) Information about your organization:

(i) Your determination that standing employees down is necessary for safety in your organization and a statement of your basis for it, including any data on safety problems or incidents that could have been prevented if a stand-down procedure had been in place;

(ii) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for your employees over the two calendar years preceding your waiver request, and the number and percentage of those test results that were verified positive, adulterated, or substituted by the MRO;

(iii) Information about the work situation of the employees subject to stand-down, including a description of the size and organization of the unit(s) in which the employees work, the process through which employees will be informed of the stand-down, whether there is an in-house MRO, and whether your organization has a medical disqualification or stand-down policy for employees in situations other than drug and alcohol testing; and

(iv) A statement of which DOT agencies regulate your employees.

(2) Your proposed written company policy concerning stand-down, which must include the following elements:

(i) Your assurance that you will distribute copies of your written policy to all employees that it covers;

(ii) Your means of ensuring that no information about the confirmed positive, adulterated, or substituted test result or the reason for the employee's temporary removal from performance of safety-sensitive functions becomes available, directly or indirectly, to anyone in your organization (or subsequently to another employer) other than the employee, the MRO and the DER;

(iii) Your means of ensuring that all covered employees in a particular job category in your organization are treated the same way with respect to stand-down;

(iv) Your means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;

(v) Your means of ensuring that you will not take any action adversely affecting the employee's pay and benefits pending the completion of the MRO's verification process. This includes continuing to pay the employee during the period of the stand-down in the same way you would have paid him or her had he or she not been stood down;

(vi) Your means of ensuring that the verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of stand-down for any employee will not exceed five days, unless you are informed in writing by the MRO that a longer period is needed to complete the verification process; and

(vii) Your means of ensuring that, in the event that the MRO verifies the test negative or cancels it -

(A) You return the employee immediately to the performance of safety-sensitive duties;



- (B) The employee suffers no adverse personnel or financial consequences as a result; and
- (C) You maintain no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (*i.e.*, you maintain a record of the test only as a negative or cancelled test).
- (d) The Administrator of the concerned DOT agency, or his or her designee, may grant a waiver request only if he or she determines that, in the context of your organization, there is a high probability that the procedures you propose will effectively enhance safety and protect the interests of employees in fairness and confidentiality.
  - (1) The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.
  - (2) The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that you have failed to protect effectively the interests of employees in fairness and confidentiality, that you have failed to comply with the requirements of this section, or that you have failed to comply with any other conditions the DOT agency has attached to the waiver.
- (e) You must not stand employees down in the absence of a waiver, or inconsistent with the terms of your waiver. If you do, you are in violation of this part and DOT agency drug testing regulations, and you are subject to enforcement action by the DOT agency just as you are for other violations of this part and DOT agency rules.

#### § 40.23 What actions do employers take after receiving verified test results?

- (a) As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test.
- (b) As an employer who receives a verified adulterated or substituted drug test result, you must consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions. You must take this action on receiving the initial report of the verified adulterated or substituted test result. Do not wait to receive the written report or the result of a split specimen test.
- (c) As an employer who receives an alcohol test result of 0.04 or higher, you must immediately remove the employee involved from performing safety-sensitive functions. If you receive an alcohol test result of 0.02-0.039, you must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test.
- (d) As an employer, when an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug and alcohol regulation, you must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process of Subpart O of this part.
- (e) As an employer who receives a drug test result indicating that the employee's specimen was dilute, take action as provided in § 40.197.
- (f) As an employer who receives a drug test result indicating that the employee's urine specimen test was cancelled because it was invalid and that a second collection must take place under direct observation -
  - (1) You must immediately direct the employee to provide a new specimen under direct observation.

- (2) You must not attach consequences to the finding that the test was invalid other than collecting a new specimen under direct observation.
  - (3) You must not give any advance notice of this test requirement to the employee.
  - (4) You must instruct the collector to note on the CCF the same reason (e.g., random test, post-accident test) and DOT Agency (e.g., check DOT and FMCSA) as for the original collection.
  - (5) You must ensure that the collector conducts the collection under direct observation.
- (g) As an employer who receives a cancelled test result when a negative result is required (e.g., pre-employment, return-to-duty, or follow-up test), you must direct the employee to provide another specimen immediately.
- (h) As an employer, you may also be required to take additional actions required by DOT agency regulations (e.g., FAA rules require some positive drug tests to be reported to the Federal Air Surgeon).
- (i) As an employer, you must not alter a drug or alcohol test result transmitted to you by an MRO, BAT, or C/TPA.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 73 FR 35970, June 25, 2008; 75 FR 59107, Sept. 27, 2010]

#### **§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?**

- (a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.
- (b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:
- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
  - (2) Verified positive drug tests;
  - (3) Refusals to be tested (including verified adulterated or substituted drug test results);
  - (4) Other violations of DOT agency drug and alcohol testing regulations; and
  - (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.
- (c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

- (d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.
- (e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.
- (f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.
- (g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.
- (h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.
- (i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.
- (j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

## **§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?**

As an employer, when you are required to report MIS data to a DOT agency, you must use the U.S. Department of Transportation Drug and Alcohol Testing MIS Data Collection Form to report that data. You must use the form and instructions referenced at Appendix H to part 40. You must submit the MIS report in accordance with rule requirements (e.g., dates for submission; selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

[84 FR 16773, Apr. 23, 2019]

## **§ 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?**

No, as an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

[66 FR 41950, Aug. 9, 2001]

## **§ 40.29 Where is other information on employer responsibilities found in this regulation?**

You can find other information on the responsibilities of employers in the following sections of this part:

§ 40.3 - Definition.

§ 40.35 - Information about DERs that employers must provide collectors.

§ 40.45 - Modifying CCFs, Use of foreign-language CCFs.

§ 40.47 - Use of non-Federal forms for DOT tests or Federal CCFs for non-DOT tests.

§ 40.67 - Requirements for direct observation.

§ 40.173 - Responsibility to ensure test of split specimen.

§ 40.193 - Action in "shy bladder" situations.

§ 40.197 - Actions following report of a dilute specimen.

§ 40.207 - Actions following a report of a cancelled drug test.

§ 40.209 - Actions following and consequences of non-fatal flaws in drug tests.

§ 40.215 - Information about DERs that employers must provide BATs and STTs.

§ 40.225 - Modifying ATFs; use of foreign-language ATFs.

§ 40.227 - Use of non-DOT forms for DOT tests or DOT ATFs for non-DOT tests.

§ 40.235 (c) and (d) - responsibility to follow instructions for ASDs.

§ 40.255 (b) - receipt and storage of alcohol test information.

§ 40.265 (c)-(e) - actions in "shy lung" situations.

§ 40.267 - Cancellation of alcohol tests.

- § 40.271 - Actions in “correctable flaw” situations in alcohol tests.
- § 40.273 - Actions following cancelled tests in alcohol tests.
- § 40.275 - Actions in “non-fatal flaw” situations in alcohol tests.
- §§ 40.287-40.289 - Responsibilities concerning SAP services.
- §§ 40.295-40.297 - Prohibition on seeking second SAP evaluation or changing SAP recommendation.
- § 40.303 - Responsibilities concerning aftercare recommendations.
- § 40.305 - Responsibilities concerning return-to-duty decision.
- § 40.309 - Responsibilities concerning follow-up tests.
- § 40.321 - General confidentiality requirement.
- § 40.323 - Release of confidential information in litigation.
- § 40.331 - Other circumstances for the release of confidential information.
- § 40.333 - Record retention requirements.
- § 40.345 - Choice of who reports drug testing information to employers.

[65 FR 79526, Dec. 19, 2000. Redesignated at 66 FR 41950, Aug. 9, 2001, as amended at 82 FR 52244, Nov. 13, 2017]

## Subpart C - Urine Collection Personnel

### § 40.31 Who may collect urine specimens for DOT drug testing?

- (a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
- (b) A collector must meet training requirements of § 40.33.
- (c) As the immediate supervisor of an employee being tested, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.
- (d) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (e.g., as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.

### § 40.33 What training requirements must a collector meet?

To be permitted to act as a collector in the DOT drug testing program, you must meet each of the requirements of this section:

- (a) **Basic information.** You must be knowledgeable about this part, the current “DOT Urine Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, the DOT Urine Specimen Collection Procedures Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590, 202-366-3784, or on the ODAPC Web site (<https://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: <https://www.transportation.gov/odapc/get-odapc-email-updates>.
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:
  - (1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
  - (2) “Problem” collections (e.g., situations like “shy bladder” and attempts to tamper with a specimen);
  - (3) Fatal flaws, correctable flaws, and how to correct problems in collections; and
  - (4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;
- (c) **Initial Proficiency Demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.
  - (1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.
  - (2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by -
    - (i) Regularly conducting DOT drug test collections for a period of at least a year;
    - (ii) Conducting collector training under this part for a year; or
    - (iii) Successfully completing a “train the trainer” course.
- (d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.
- (f) **Error Correction Training.** If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.
  - (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.

- (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
  - (3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were "error-free."
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[65 FR 79526, Dec. 19, 2000; 66 FR 3885, Jan. 17, 2001, as amended at 66 FR 41950, Aug. 9, 2001; 82 FR 52244, Nov. 13, 2017]

### § 40.35 What information about the DER must employers provide to collectors?

As an employer, you must provide to collectors the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

### § 40.37 Where is other information on the role of collectors found in this regulation?

You can find other information on the role and functions of collectors in the following sections of this part:

§ 40.3 - Definition.

§ 40.43 - Steps to prepare and secure collection sites.

§§ 40.45-40.47 - Use of CCF.

§§ 40.49-40.51 - Use of collection kit and shipping materials.

§§ 40.61-40.63 - Preliminary steps in collections.

§ 40.65 - Role in checking specimens.

§ 40.67 - Role in directly observed collections.

§ 40.69 - Role in monitored collections.

§ 40.71 - Role in split specimen collections.

§ 40.73 - Chain of custody completion and finishing the collection process.

§ 40.191 - Action in case of refusals to take test.

§ 40.193 - Action in "shy bladder" situations.

§ 40.199-40.205 - Collector errors in tests, effects, and means of correction.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52244, Nov. 13, 2017]

## Subpart D - Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

### § 40.41 Where does a urine collection for a DOT drug test take place?

- (a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- (b) If you are operating a collection site, you must ensure that it meets the security requirements of § 40.43.
- (c) If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.
- (d) Your collection site must include a facility for urination described in either paragraph (e) or paragraph (f) of this section.
- (e) The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.
  - (1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.
  - (2) You must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and providing moist towelettes outside the closed room.
- (f) The second type of facility for urination that a collection site may include is a multistall restroom.
  - (1) Such a site must provide substantial visual privacy (e.g., a toilet stall with a partial-length door) and meet all other applicable requirements of this section.
  - (2) If you use a multi-stall restroom, you must either -
    - (i) Secure all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or
    - (ii) Conduct all collections in the facility as monitored collections (see § 40.69 for procedures). This is the only circumstance in which you may conduct a monitored collection.
  - (3) No one but the employee may be present in the multistall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.
- (g) A collection site may be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.



## § 40.43 What steps must operators of collection sites take to protect the security and integrity of urine collections?

- (a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.
- (b) As a collector, you must do the following before each collection to deter tampering with specimens:
  - (1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);
  - (2) Ensure that the water in the toilet is blue;
  - (3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
  - (4) Inspect the site to ensure that no foreign or unauthorized substances are present;
  - (5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;
  - (6) Ensure that undetected access (e.g., through a door not in your view) is not possible;
  - (7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and
  - (8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.
- (c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:
  - (1) Access to collection materials and specimens is effectively restricted; and
  - (2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.
- (d) As a collector, you must take the following additional steps to ensure security during the collection process:
  - (1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "shy bladder" situation (see § 40.193(b)), you may conduct a collection for another employee.
  - (2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.
  - (3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.
  - (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
  - (5) Maintain personal control over each specimen and CCF throughout the collection process.
- (e) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.

- (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).
  - (2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.
  - (3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
  - (4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- (f) If you are operating a collection site, you must minimize the number of persons handling specimens.

### § 40.45 What form is used to document a DOT urine collection?

- (a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. You may view this form on the Department's Web site (<http://www.transportation.gov/odapc>) or the HHS Web site (<http://www.workplace.samhsa.gov>).
- (b) You must not use a non-Federal form or an expired CCF to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF.
- (c) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:
  - (1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.
  - (2) The CCF must include the names, addresses, telephone numbers and fax numbers of the employer and the MRO, which may be preprinted, typed, or handwritten. The MRO information must include the specific physician's name and address, as opposed to only a generic clinic, health care organization, or company name. This information is required, and it is prohibited for an employer, collector, service agent or any other party to omit it. In addition, a C/TPA's name, address, fax number, and telephone number may be included, but is not required. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone number, and fax number.
  - (3) As an employer, in Step 1-D of the CCF you may preprint the box for the DOT Agency under whose authority the test will occur.
  - (4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event.
  - (5) When using an electronic CCF, you must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form.

- (d) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number (SSN) or other employee identification (ID) number) to a laboratory.
- (e) As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.
- (f) An employer who uses an electronic CCF must ensure that the collection site, the primary and split laboratories, and MRO have compatible systems, and that the employee and any other program participants in the testing process will receive a legible copy of the CCF.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 75 FR 59107, Sept. 27, 2010; 76 FR 59577, Sept. 27, 2011; 80 FR 19553, Apr. 13, 2015; 82 FR 52244, Nov. 13, 2017]

### **§ 40.47 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?**

- (a) No, as an employer, you are prohibited from using the CCF for non-Federal urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations.
- (b)
  - (1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (e.g., post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.
  - (2) The use of the non-Federal form is a “correctable flaw.” As an MRO, to correct the problem you must follow the procedures of § 40.205(b)(2).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001]

### **§ 40.49 What materials are used to collect urine specimens?**

For each DOT drug test, you must use a collection kit meeting the requirements of Appendix A of this part.

### **§ 40.51 What materials are used to send urine specimens to the laboratory?**

- (a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.
- (b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

## **Subpart E - Urine Specimen Collections**

### **§ 40.61 What are the preliminary steps in the collection process?**

As the collector, you must take the following steps before actually beginning a collection:

- (a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test (see § 40.191(a)(1)).
- (b) Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.
  - (1) If the employee is also going to take a DOT alcohol test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

*Example to paragraph (b)(1):* An employee enters the test site for both a drug and an alcohol test. Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (e.g., by moving the employee to the head of the line for alcohol tests).

- (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.
  - (3) You must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner.
  - (4) If, as an employee, you normally void through self-catheterization, and decline to do so, this constitutes a refusal to test.
- (c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
  - (d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name, but does not have to include your picture, address, or telephone number.
  - (e) Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.

- (f) Direct the employee to remove outer clothing (e.g., coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. You must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with you or in a mutually agreeable location. You must advise the employee that failure to comply with your directions constitutes a refusal to test.
  - (1) If the employee asks for a receipt for any belongings left with you, you must provide one.
  - (2) You must allow the employee to keep his or her wallet.
  - (3) You must not ask the employee to remove other clothing (e.g., shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).
  - (4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. As the employee, you must allow the collector to make this observation.
  - (5) If, in your duties under paragraph (f)(4) of this section, you find any material that could be used to tamper with a specimen, you must:
    - (i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, conduct a directly observed collection using direct observation procedures (see § 40.67); or
    - (ii) Determine if the material appears to be inadvertently brought to the collection site (e.g., eye drops), secure and maintain it until the collection process is completed and conduct a normal (i.e., unobserved) collection.
- (g) You must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medications on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)

### **§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?**

As the collector, you must take the following steps before the employee provides the urine specimen:

- (a) Complete Step 1 of the CCF.
- (b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to you. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.
- (c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.
- (d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to you with the specimen as soon as the employee has completed the void.

- (1) Except in the case of an observed or a monitored collection (see §§ 40.67 and 40.69), neither you nor anyone else may go into the room with the employee.
- (2) As the collector, you may set a reasonable time limit for voiding.
- (e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If you detect such conduct, you must require that a collection take place immediately under direct observation (see § 40.67) and complete Step 2 by noting the conduct in the "Remarks" line of the CCF and the fact that the collection was observed by checking the "Observed" box. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 59107, Sept. 27, 2010]

### § 40.65 What does the collector check for when the employee presents a specimen?

As a collector, you must check the following when the employee gives the collection container to you:

- (a) **Sufficiency of specimen.** You must check to ensure that the specimen contains at least 45 mL of urine.
  - (1) If it does not, you must follow "shy bladder" procedures (see § 40.193(b)).
  - (2) When you follow "shy bladder" procedures, you must discard the original specimen, unless another problem (i.e., temperature out of range, signs of tampering) also exists.
  - (3) You are never permitted to combine urine collected from separate voids to create a specimen.
  - (4) You must discard any excess urine.
- (b) **Temperature.** You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.
  - (1) The acceptable temperature range is 32-38 °C/90-100 °F.
  - (2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.
  - (3) If the specimen temperature is within the acceptable range, you must mark the "Yes" box on the CCF (Step 2).
  - (4) If the specimen temperature is outside the acceptable range, you must mark the "No" box and enter in the "Remarks" line (Step 2) your findings about the temperature.
  - (5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new collection using direct observation procedures (see § 40.67).
  - (6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

- (7) In a case where the employee refuses to provide another specimen (see § 40.191(a)(3)) or refuses to provide another specimen under direct observation (see § 40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.
- (c) **Signs of tampering.** You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (e.g., if you notice any unusual odor).
  - (1) If it is apparent from this inspection that the employee has tampered with the specimen (e.g., blue dye in the specimen, excessive foaming when shaken, smell of bleach), you must immediately conduct a new collection using direct observation procedures (see § 40.67).
  - (2) In a case where a specimen is collected under direct observation because of showing signs of tampering, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.
  - (3) In a case where the employee refuses to provide a specimen under direct observation (see § 40.191(a)(4)), you must discard any specimen the employee provided previously during the collection procedure. Then you must notify the DER as soon as practicable.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001]

### § 40.67 When and how is a directly observed collection conducted?

- (a) As an employer, you must direct an immediate collection under direct observation with no advance notice to the employee, if:
  - (1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result;
  - (2) The MRO reported to you that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or
  - (3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see § 40.197(b)(1)).
- (b) As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.
- (c) As a collector, you must immediately conduct a collection under direct observation if:
  - (1) You are directed by the DER to do so (see paragraphs (a) and (b) of this section); or
  - (2) You observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (see §§ 40.61(f)(5)(i) and 40.63(e)); or
  - (3) The temperature on the original specimen was out of range (see § 40.65(b)(5)); or
  - (4) The original specimen appeared to have been tampered with (see § 40.65(c)(1)).

(d)

(1) As the employer, you must explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.

(2) As the collector, you must explain to the employee the reason, if known, under this part for a directly observed collection under paragraphs (c)(1) through (3) of this section.

(e) As the collector, you must complete a new CCF for the directly observed collection.

(1) You must mark the "reason for test" block (Step 1) the same as for the first collection.

(2) You must check the "Observed, (Enter Remark)" box and enter the reason (see § 40.67(b)) in the "Remarks" line (Step 2).

(f) In a case where two sets of specimens are being sent to the laboratory because of suspected tampering with the specimen at the collection site, enter on the "Remarks" line of the CCF (Step 2) for each specimen a notation to this effect (e.g., collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.

(g) As the collector, you must ensure that the observer is the same gender as the employee. You must never permit an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.

(h) As the collector, if someone else is to observe the collection (e.g., in order to ensure a same gender observer), you must verbally instruct that person to follow procedures at paragraphs (i) and (j) of this section. If you, the collector, are the observer, you too must follow these procedures.

(i) As the observer, you must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show you, by turning around, that they do not have a prosthetic device. After you have determined that the employee does not have such a device, you may permit the employee to return clothing to its proper position for observed urination.

(j) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.

(k) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.

(l) As the collector, when someone else has acted as the observer, you must include the observer's name in the "Remarks" line of the CCF (Step 2).

(m) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.

(n) As a service agent, when you learn that a directly observed collection should have been collected but was not, you must inform the employer that it must direct the employee to have an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35970, June 25, 2008; 73 FR 50223, Aug. 26, 2008; 73 FR 62910, Oct. 22, 2008; 73 FR 70284, Nov. 20, 2008; 74 FR 37952, July 30, 2009; 82 FR 52244, Nov. 13, 2017]



### § 40.69 How is a monitored collection conducted?

- (a) As the collector, you must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.
- (b) As the collector, you must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The monitor can be a different person from the collector and need not be a qualified collector.
- (c) As the collector, if someone else is to monitor the collection (e.g., in order to ensure a same-gender monitor), you must verbally instruct that person to follow the procedures of paragraphs (d) and (e) of this section. If you, the collector, are the monitor, you must follow these procedures.
- (d) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation (see §§ 40.63(e), 40.65(c), and 40.67(b)).
- (e) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.
- (f) As the collector, when someone else has acted as the monitor, you must note that person's name in the "Remarks" line of the CCF (Step 2).
- (g) As the employee being tested, if you decline to permit a collection authorized under this section to be monitored, it is a refusal to test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001]

### § 40.71 How does the collector prepare the specimens?

- (a) All collections under DOT agency drug testing regulations must be split specimen collections.
- (b) As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you. You must take these steps in the presence of the employee.
  - (1) Check the box on the CCF (Step 2) indicating that this was a split specimen collection.
  - (2) You, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.
  - (3) You, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.
  - (4) You, not the employee, must place and secure (*i.e.*, tighten or snap) the lids/caps on the bottles.
  - (5) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.
  - (6) You, not the employee, must then write the date on the tamper-evident bottle seals.
  - (7) You must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided. If the employee fails or refuses to do so, you must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.

- (8) You must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: you may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither you nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to demand that the excess urine be turned over to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001]

### § 40.73 How is the collection process completed?

- (a) As the collector, when using the paper CCF, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (7) of this section in the employee's presence.
  - (1) Direct the employee to read and sign the certification statement on Copy 2 (Step 5) of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide date of birth, printed name, or telephone numbers, you must note this in the "Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.
  - (2) Complete the chain of custody on the CCF (Step 4) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory,
  - (3) Ensure that all copies of the CCF are legible and complete.
  - (4) Remove Copy 5 of the CCF and give it to the employee.
  - (5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.
  - (6) Secure both pouches of the plastic bag.
  - (7) Advise the employee that he or she may leave the collection site.
  - (8) To prepare the sealed plastic bag containing the specimens and CCF for shipment you must:
    - (i) Place the sealed plastic bag in a shipping container (e.g., standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)
    - (ii) Seal the container as appropriate.
    - (iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.
  - (9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.
- (b) As a collector, when using other forms of the CCF as approved by the Office of Management and Budget, you must follow the procedures approved for that form.

- (c) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case, within 24 hours or during the next business day.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 80 FR 19553, Apr. 13, 2015]

## Subpart F - Drug Testing Laboratories

### § 40.81 What laboratories may be used for DOT drug testing?

- (a) As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP) for all testing required under this part.
- (b) As a drug testing laboratory located in Canada or Mexico which is not certified by HHS under the NLCP, you are permitted to participate in DOT drug testing only if:
  - (1) The DOT, based on a written recommendation from HHS, has approved your laboratory as meeting HHS laboratory certification standards or deemed your laboratory fully equivalent to a laboratory meeting HHS laboratory certification standards for all testing required under this part; or
  - (2) The DOT, based on a written recommendation from HHS, has recognized a Canadian or Mexican certifying organization as having equivalent laboratory certification standards and procedures to those of HHS, and the Canadian or Mexican certifying organization has certified your laboratory under those equivalent standards and procedures.
- (c) As a laboratory participating in the DOT drug testing program, you must comply with the requirements of this part. You must also comply with all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in this part.
- (d) If DOT determines that you are in noncompliance with this part, you could be subject to PIE proceedings under Subpart R of this part. If the Department issues a PIE with respect to you, you are ineligible to participate in the DOT drug testing program even if you continue to meet the requirements of paragraph (a) or (b) of this section.

### § 40.83 How do laboratories process incoming specimens?

As the laboratory, you must do the following when you receive a DOT specimen:

- (a) You are authorized to receive only Copy 1 of the CCF. You are not authorized to receive other copies of the CCF or any copies of the alcohol testing form.
- (b) You must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing urine drug specimens.
- (c) You must inspect each specimen and CCF for the following "fatal flaws":
  - (1) There is no CCF;
  - (2) In cases where a specimen has been collected, there is no specimen submitted with the CCF;
  - (3) There is no printed collector's name and no collector's signature;
  - (4) Two separate collections are performed using one CCF;
  - (5) The specimen ID numbers on the specimen bottle and the CCF do not match;

- (6) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be redesignated (see paragraph (h) of this section);
- (7) There is an insufficient amount of urine in the primary bottle for analysis, unless the specimens can be redesignated (see paragraph (h) of this section).
- (d) When you find a specimen meeting the criteria of paragraph (c) of this section, you must document your findings and stop the testing process. Report the result in accordance with § 40.97(a)(3) .
- (e) You must inspect each CCF for the presence of the collector's signature on the certification statement in Step 4 of the CCF. Upon finding that the signature is omitted, document the flaw and continue the testing process.
  - (1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the flaw.
  - (2) You must then attempt to correct the flaw by following the procedures of § 40.205(b)(1).
  - (3) If the flaw is not corrected, report the result as rejected for testing in accordance with § 40.97(a)(3).
- (f) If you determine that the specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being outside of range, you must then attempt to correct the problem by following the procedures of § 40.208.
  - (1) In such a case, you must continue your efforts to correct the problem for five business days, before you report the result.
  - (2) When you have obtained the correction, or five business days have elapsed, report the result in accordance with § 40.97(a).
- (g) If you determine that a CCF that fails to meet the requirements of § 40.45(a) (e.g., a non-Federal form or an expired Federal form was used for the collection), you must attempt to correct the use of the improper form by following the procedures of § 40.205(b)(2).
  - (1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the problem.
  - (2) If the problem(s) is not corrected, you must reject the test and report the result in accordance with § 40.97(a)(3).
- (h) If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not accompany the primary, has leaked, or is otherwise unavailable for testing, you must still test the primary specimen and follow appropriate procedures outlined in § 40.175(b) regarding the unavailability of the split specimen for testing.
  - (1) The primary specimen and the split specimen can be redesignated (*i.e.*, Bottle B is redesignated as Bottle A, and vice-versa) if:
    - (i) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or
    - (ii) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or

- (iii) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or
  - (iv) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing.
- (2) In situations outlined in paragraph (g)(1) of this section, the laboratory shall mark through the "A" and write "B," then initial and date the change. A corresponding change shall be made to the other bottle by marking through the "B" and writing "A," and initialing and dating the change.
- (i) A notation shall be made on Copy 1 of the CCF (Step 5a) and on any laboratory internal chain of custody documents, as appropriate, for any fatal or correctable flaw.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 73 FR 35970, June 25, 2008; 75 FR 59107, Sept. 27, 2010; 82 FR 52244, Nov 13, 2017]

### § 40.85 What drugs do laboratories test for?

As a laboratory, you must test for the following five drugs or classes of drugs in a DOT drug test. You must not test "DOT specimens" for any other drugs.

- (a) Marijuana metabolites.
- (b) Cocaine metabolites.
- (c) Amphetamines.
- (d) Opioids.
- (e) Phencyclidine (PCP).

[82 FR 52244, Nov. 13, 2017]

### § 40.87 What are the cutoff concentrations for drug tests?

- (a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) <sup>2</sup>	50 ng/mL <sup>3</sup>	THCA	15 ng/mL.
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL <sup>3</sup>	Benzoyllecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/	100 ng/mL	Oxycodone	100 ng/mL.

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Oxymorphone		Oxymorphone	100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA <sup>4</sup> /MDA <sup>5</sup>	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

<sup>1</sup> For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

*Immunoassay:* The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

*Alternate technology:* Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

<sup>2</sup> An immunoassay must be calibrated with the target analyte, Δ-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

<sup>3</sup>*Alternate technology (THCA and Benzoyllecgonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoyllecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoyllecgonine).

<sup>4</sup> Methylenedioxyamphetamine (MDMA).

<sup>5</sup> Methylenedioxyamphetamine (MDA).

- (b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.
- (c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.
- (d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 49862, Aug. 16, 2010; 77 FR 26473, May 4, 2012; 82 FR 52244, Nov. 13, 2017]

### § 40.89 What is validity testing, and are laboratories required to conduct it?

- (a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (b) As a laboratory, you must conduct validity testing.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 73 FR 35970, June 25, 2008]

### § 40.91 What validity tests must laboratories conduct on primary specimens?

As a laboratory, when you conduct validity testing under § 40.89, you must conduct it in accordance with the requirements of this section.

- (a) You must determine the creatinine concentration on each primary specimen. You must also determine its specific gravity if you find the creatinine concentration to be less than 20 mg/dL.
- (b) You must determine the pH of each primary specimen.
- (c) You must perform one or more validity tests for oxidizing adulterants on each primary specimen.
- (d) You must perform additional validity tests on the primary specimen when the following conditions are observed:
  - (1) Abnormal physical characteristics;
  - (2) Reactions or responses characteristic of an adulterant obtained during initial or confirmatory drug tests (e.g., non-recovery of internal standards, unusual response); or
  - (3) Possible unidentified interfering substance or adulterant.
- (e) If you determine that the specimen is invalid and HHS guidelines direct you to contact the MRO, you must contact the MRO and together decide if testing the primary specimen by another HHS certified laboratory would be useful in being able to report a positive or adulterated test result.

[65 FR 79526, Dec. 19, 2000, as amended at 69 FR 64867, Nov. 9, 2004]

### § 40.93 What criteria do laboratories use to establish that a specimen is dilute or substituted?

- (a) As a laboratory, you must consider the primary specimen to be dilute when:
  - (1) The creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL, and
  - (2) The specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.
- (b) As a laboratory, you must consider the primary specimen to be substituted when the creatinine concentration is less than 2 mg/dL and the specific gravity is less than or equal to 1.0010 or greater than or equal to 1.0200 on both the initial and confirmatory creatinine tests and on both the initial and confirmatory specific gravity tests on two separate aliquots.

[69 FR 64867, Nov. 9, 2004]

### § 40.95 What are the adulterant cutoff concentrations for initial and confirmation tests?

- (a) As a laboratory, you must use the cutoff concentrations for the initial and confirmation adulterant testing as required by the HHS Mandatory Guidelines and you must use two separate aliquots - one for the initial test and another for the confirmation test.
- (b) As a laboratory, you must report results at or above the cutoffs (or for pH, at or above or below the values, as appropriate) as adulterated and provide the numerical value that supports the adulterated result.

[73 FR 35970, June 25, 2008]

### § 40.96 What criteria do laboratories use to establish that a specimen is invalid?

- (a) As a laboratory, you must use the invalid test result criteria for the initial and confirmation testing as required by the HHS Mandatory Guidelines, and you must use two separate aliquots - one for the initial test and another for the confirmation test.
- (b) As a laboratory, for a specimen having an invalid result for one of the reasons outlined in the HHS Mandatory Guidelines, you must contact the MRO to discuss whether sending the specimen to another HHS certified laboratory for testing would be useful in being able to report a positive or adulterated result.
- (c) As a laboratory, you must report invalid results in accordance with the invalid test result criteria as required by the HHS Guidelines and provide the numerical value that supports the invalid result, where appropriate, such as pH.
- (d) As a laboratory, you must report the reason a test result is invalid.

[73 FR 35970, June 25, 2008]

### § 40.97 What do laboratories report and how do they report it?

- (a) As a laboratory, you must report the results for each primary specimen. The result of a primary specimen will fall into one of the following three categories. However, as a laboratory, you must report the actual results (and not the categories):
  - (1) Category 1: Negative Results. As a laboratory, when you find a specimen to be negative, you must report the test result as being one of the following, as appropriate:
    - (i) Negative, or
    - (ii) Negative-dilute, with numerical values for creatinine and specific gravity.
  - (2) Category 2: Non-negative Results. As a laboratory, when you find a specimen to be non-negative, you must report the test result as being one or more of the following, as appropriate:
    - (i) Positive, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s).
    - (ii) Positive-dilute, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s) and with numerical values for creatinine and specific gravity;
    - (iii) Adulterated, with adulterant(s) noted, with confirmatory test values (when applicable), and with remark(s);



- (iv) Substituted, with confirmatory test values for creatinine and specific gravity; or
  - (v) Invalid result, with remark(s). Laboratories will report actual values for pH results.
- (3) Category 3: Rejected for Testing. As a laboratory, when you reject a specimen for testing, you must report the result as being Rejected for Testing, with remark(s).
- (b) As a laboratory, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or a service agent (e.g., C/TPA).
- (1) Negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF which has been signed by the certifying scientist, or you may provide the laboratory results report electronically (*i.e.*, computer data file).
- (i) If you elect to provide the laboratory results report, you must include the following elements, as a minimum, in the report format:
    - (A) Laboratory name and address;
    - (B) Employer's name (you may include I.D. or account number);
    - (C) Medical review officer's name;
    - (D) Specimen I.D. number;
    - (E) Donor's SSN or employee I.D. number, if provided;
    - (F) Reason for test, if provided;
    - (G) Collector's name and telephone number;
    - (H) Date of the collection;
    - (I) Date received at the laboratory;
    - (J) Date certifying scientist released the results;
    - (K) Certifying scientist's name;
    - (L) Results (e.g., positive, adulterated) as listed in paragraph (a) of this section; and
    - (M) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.
  - (ii) You may release the laboratory results report only after review and approval by the certifying scientist. It must reflect the same test result information as contained on the CCF signed by the certifying scientist. The information contained in the laboratory results report may not contain information that does not appear on the CCF.
  - (iii) The results report may be transmitted through any means that ensures accuracy and confidentiality. You, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage.
- (2) Non-negative and Rejected for Testing results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, you may provide the electronic laboratory results report following the format and procedures set forth in paragraphs (b)(1)(i) and (ii) of this section.

- (c) In transmitting laboratory results to the MRO, you, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax, the fax connection must have a fixed telephone number accessible only to authorized individuals.
- (d) You must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.
- (e)
  - (1) You must provide quantitative values for confirmed positive drug test results to the MRO.
  - (2) You must provide the numerical values that support the adulterated (when applicable) or substituted result, without a request from the MRO.
  - (3) You must also provide to the MRO numerical values for creatinine and specific gravity for the negative-dilute test result, without a request from the MRO.
- (f) You must provide quantitative values for confirmed opiate results for morphine or codeine at 15,000 ng/mL or above, even if the MRO has not requested quantitative values for the test result.

*[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35970, June 25, 2008; 75 FR 49862, Aug. 16, 2010; 75 FR 59107, Sept. 27, 2010; 77 FR 26473, May 4, 2012]*

#### **§ 40.99 How long does the laboratory retain specimens after testing?**

- (a) As a laboratory testing the primary specimen, you must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.
- (b) You must keep such a specimen in secure, long-term, frozen storage in accordance with HHS requirements.
- (c) Within the one-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain a specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the specimen at the end of the year.
- (d) If you have not sent the split specimen to another laboratory for testing, you must retain the split specimen for an employee's test for the same period of time that you retain the primary specimen and under the same storage conditions.
- (e) As the laboratory testing the split specimen, you must meet the requirements of paragraphs (a) through (d) of this section with respect to the split specimen.

#### **§ 40.101 What relationship may a laboratory have with an MRO?**

- (a) As a laboratory, you may not enter into any relationship with an MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's responsibilities for the employer. You may not derive any financial benefit by having an employer use a specific MRO.
- (b) The following are examples of relationships between laboratories and MROs that the Department regards as creating conflicts of interest, or the appearance of such conflicts. This following list of examples is not intended to be exclusive or exhaustive:
  - (1) The laboratory employs an MRO who reviews test results produced by the laboratory;

- (2) The laboratory has a contract or retainer with the MRO for the review of test results produced by the laboratory;
- (3) The laboratory designates which MRO the employer is to use, gives the employer a slate of MROs from which to choose, or recommends certain MROs;
- (4) The laboratory gives the employer a discount or other incentive to use a particular MRO;
- (5) The laboratory has its place of business co-located with that of an MRO or MRO staff who review test results produced by the laboratory; or
- (6) The laboratory permits an MRO, or an MRO's organization, to have a financial interest in the laboratory.

### **§ 40.107 Who may inspect laboratories?**

As a laboratory, you must permit an inspection, with or without prior notice, by ODAPC, a DOT agency, or a DOT-regulated employer that contracts with the laboratory for drug testing under the DOT drug testing program, or the designee of such an employer.

### **§ 40.109 What documentation must the laboratory keep, and for how long?**

- (a) As a laboratory, you must retain all records pertaining to each employee urine specimen for a minimum of two years.
- (b) As a laboratory, you must also keep for two years employer-specific data required in § 40.111.
- (c) Within the two-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain the records for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the records at the end of the two-year period.

### **§ 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?**

- (a) As a laboratory, you must transmit an aggregate statistical summary, by employer, of the data listed in Appendix B to this part to the employer on a semi-annual basis.
  - (1) The summary must not reveal the identity of any employee.
  - (2) In order to avoid sending data from which it is likely that information about an employee's test result can be readily inferred, you must not send a summary if the employer has fewer than five aggregate tests results.
  - (3) The summary must be sent by January 20 of each year for July 1 through December 31 of the prior year.
  - (4) The summary must also be sent by July 20 of each year for January 1 through June 30 of the current year.
- (b) When the employer requests a summary in response to an inspection, audit, or review by a DOT agency, you must provide it unless the employer had fewer than five aggregate test results. In that case, you must send the employer a report indicating that not enough testing was conducted to warrant a summary. You may transmit the summary or report by hard copy, fax, or other electronic means.

- (c) You must also release information to appropriate parties as provided in §§ 40.329 and 40.331.
- (d) As a laboratory, you must transmit an aggregate statistical summary of the data listed in Appendix C to this part to DOT on a semi-annual basis. The summary must be sent by January 31 of each year for July 1 through December 31 of the prior year; it must be sent by July 31 of each year for January 1 through June 30 of the current year.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35971, June 25, 2008]

### **§ 40.113 Where is other information concerning laboratories found in this regulation?**

You can find more information concerning laboratories in several sections of this part:

- § 40.3 - Definition.
- § 40.13 - Prohibition on making specimens available for other purposes.
- § 40.31 - Conflicts of interest concerning collectors.
- § 40.47 - Laboratory rejections of test for improper form.
- § 40.125 - Conflicts of interest concerning MROs.
- § 40.175 - Role of first laboratory in split specimen tests.
- § 40.177 - Role of second laboratory in split specimen tests (drugs).
- § 40.179 - Role of second laboratory in split specimen tests (adulterants).
- § 40.181 - Role of second laboratory in split specimen tests (substitution).
- §§ 40.183-40.185 - Transmission of split specimen test results to MRO.
- §§ 40.201-40.205 - Role in correcting errors.
- § 40.329 - Release of information to employees.
- § 40.331 - Limits on release of information.
- § 40.355 - Role with respect to other service agents.

## **Subpart G - Medical Review Officers and the Verification Process**

### **§ 40.121 Who is qualified to act as an MRO?**

To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section:

- (a) **Credentials.** You must be a licensed physician (Doctor of Medicine or Osteopathy). If you are a licensed physician in any U.S., Canadian, or Mexican jurisdiction and meet the other requirements of this section, you are authorized to perform MRO services with respect to all covered employees, wherever they are located. For example, if you are licensed as an M.D. in one state or province in the U.S., Canada, or Mexico, you are not limited to performing MRO functions in that state or province, and you may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.
- (b) **Basic knowledge.** You must be knowledgeable in the following areas:
- (1) You must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.
  - (2) You must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.
  - (3) You must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom you evaluate drug test results, and you must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at <https://www.transportation.gov/odapc/get-odapc-email-updates>. DOT agency regulations, DOT MRO Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, 202-366-3784), or on the ODAPC Web site (<http://www.transportation.gov/odapc>).
- (c) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (c).
- (1) Qualification training must provide instruction on the following subjects:
    - (i) Collection procedures for urine specimens;
    - (ii) Chain of custody, reporting, and recordkeeping;
    - (iii) Interpretation of drug and validity tests results;
    - (iv) The role and responsibilities of the MRO in the DOT drug testing program;
    - (v) The interaction with other participants in the program (e.g., DERs, SAPs); and
    - (vi) Provisions of this part and DOT agency rules applying to employers for whom you review test results, including changes and updates to this part and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.
  - (2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
  - (3) You must meet the requirements of paragraphs (a), (b), and (c) of this section before you begin to perform MRO functions.

- (d) **Requalification training.** During each five-year period from the date on which you satisfactorily completed the examination under paragraph (c)(2) of this section, you must complete requalification training.
  - (1) This requalification training must meet the requirements of the qualification training under paragraph (c)(1) of this section.
  - (2) Following your completion of requalification training, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (e) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 75 FR 49862, Aug. 16, 2010; 82 FR 52245, Nov. 13, 2017]

### § 40.123 What are the MRO's responsibilities in the DOT drug testing program?

As an MRO, you have the following basic responsibilities:

- (a) Acting as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process.
- (b) Providing a quality assurance review of the drug testing process for the specimens under your purview. This includes, but is not limited to:
  - (1) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled (see §§ 40.199-40.203). As an MRO, you are not required to review laboratory internal chain of custody documentation. No one is permitted to cancel a test because you have not reviewed this documentation;
  - (2) Providing feedback to employers, collection sites and laboratories regarding performance issues where necessary; and
  - (3) Reporting to and consulting with the ODAPC or a relevant DOT agency when you wish DOT assistance in resolving any program issue. As an employer or service agent, you are prohibited from limiting or attempting to limit the MRO's access to DOT for this purpose and from retaliating in any way against an MRO for discussing drug testing issues with DOT.
- (c) You must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug tests results from the laboratory.
- (d) While you provide medical review of employees' test results, this part does not deem that you have established a doctor-patient relationship with the employees whose tests you review.
- (e) You must act to investigate and correct problems where possible and notify appropriate parties (e.g., HHS, DOT, employers, service agents) where assistance is needed, (e.g., cancelled or problematic tests, incorrect results).
- (f) You must ensure the timely flow of test results and other information to employers.
- (g) You must protect the confidentiality of the drug testing information.

- (h) You must perform all your functions in compliance with this part and other DOT agency regulations.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

### § 40.125 What relationship may an MRO have with a laboratory?

As an MRO, you may not enter into any relationship with an employer's laboratory that creates a conflict of interest or the appearance of a conflict of interest with your responsibilities to that employer. You may not derive any financial benefit by having an employer use a specific laboratory. For examples of relationships between laboratories and MROs that the Department views as creating a conflict of interest or the appearance of such a conflict, see § 40.101(b).

### § 40.127 What are the MRO's functions in reviewing negative test results?

As the MRO, you must do the following with respect to negative drug test results you receive from a laboratory, prior to verifying the result and releasing it to the DER:

- (a) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to initiate corrective action or to cancel the test (see §§ 40.199 and 40.203).
- (b) Review the negative laboratory test result and ensure that it is consistent with the information contained on the CCF.
- (c) Before you report a negative test result, you must have in your possession the following documents:
  - (1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
  - (2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF or the electronic laboratory results report that conveys the negative laboratory test result.
- (d) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.
- (e) On Copy 2 of the CCF, place a check mark in the "Negative" box (Step 6), provide your name, and sign, initial, or stamp and date the verification statement.
- (f) Report the result in a confidential manner (see §§ 40.163-40.167).
- (g) Staff under your direct, personal supervision may perform the administrative functions of this section for you, but only you can cancel a test. If you cancel a laboratory-confirmed negative result, check the "Test Cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, provide your name, and sign, initial or stamp and date the verification statement.
  - (1) On specimen results that are reviewed by your staff, you are responsible for assuring the quality of their work.
  - (2) You are required to personally review at least 5 percent of all CCFs reviewed by your staff on a quarterly basis, including all results that required a corrective action. However, you need not review more than 500 negative results in any quarter.

- (3) Your review must, as a minimum, include the CCF, negative laboratory test result, any accompanying corrective documents, and the report sent to the employer. You must correct any errors that you discover. You must take action as necessary to ensure compliance by your staff with this part and document your corrective action. You must attest to the quality assurance review by initialing the CCFs that you review.
- (4) You must make these CCFs easily identifiable and retrievable by you for review by DOT agencies.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001]

### **§ 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug test results?**

- (a) As the MRO, you must do the following with respect to confirmed positive, adulterated, substituted, or invalid drug tests you receive from a laboratory, before you verify the result and release it to the DER:
  - (1) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to cancel the test (see §§ 40.199 and 40.203). Staff under your direct, personal supervision may conduct this administrative review for you, but only you may verify or cancel a test.
  - (2) Review Copy 1 of the CCF and ensure that it is consistent with the information contained on Copy 2, that the test result is legible, and that the certifying scientist signed the form. You are not required to review any other documentation generated by the laboratory during their analysis or handling of the specimen (e.g., the laboratory internal chain of custody).
  - (3) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.
  - (4) Except in the circumstances spelled out in § 40.133, conduct a verification interview. This interview must include direct contact in person or by telephone between you and the employee. You may initiate the verification process based on the laboratory results report.
  - (5) Verify the test result, consistent with the requirements of §§ 40.135 through 40.145, 40.159, and 40.160, as:
    - (i) Negative; or
    - (ii) Cancelled; or
    - (iii) Positive, and/or refusal to test because of adulteration or substitution.
- (b) Before you report a verified negative, positive, test cancelled, refusal to test because of adulteration or substitution, you must have in your possession the following documents:
  - (1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
  - (2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF, containing the certifying scientist's signature.
- (c) With respect to verified positive test results, place a checkmark in the "Positive" box in Step 6 on Copy 2 of the CCF, indicate the drug(s)/metabolite(s) verified positive, and sign and date the verification statement.



- (d) If you cancel a laboratory confirmed positive, adulterated, substituted, or invalid drug test report, check the "test cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, sign, provide your name, and date the verification statement.
- (e) Report the result in a confidential manner (see §§ 40.163-40.167).
- (f) With respect to adulteration or substitution test results, check the "refusal to test because:" box (Step 6) on Copy 2 of the CCF, check the "Adulterated" or "Substituted" box, as appropriate, make appropriate annotation in the "Remarks" line, sign and date the verification statement.
- (g) As the MRO, your actions concerning reporting confirmed positive, adulterated, or substituted results to the employer before you have completed the verification process are also governed by the stand-down provisions of § 40.21 .
  - (1) If an employer has a stand-down policy that meets the requirements of § 40.21 , you may report to the DER that you have received an employee's laboratory confirmed positive, adulterated, or substituted test result, consistent with the terms of the waiver the employer received. You must not provide any further details about the test result (e.g., the name of the drug involved).
  - (2) If the employer does not have a stand-down policy that meets the requirements of § 40.21, you must not inform the employer that you have received an employee's laboratory confirmed positive, adulterated, or substituted test result until you verify the test result. For example, as an MRO employed directly by a company, you must not tell anyone on the company's staff or management that you have received an employee's laboratory confirmed test result.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 73 FR 35971, June 25, 2008; 75 FR 59107, Sept. 27, 2010]

### **§ 40.131 How does the MRO or DER notify an employee of the verification process after receiving laboratory confirmed non-negative drug test results?**

- (a) When, as the MRO, you receive a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, you must contact the employee directly (*i.e.*, actually talk to the employee), on a confidential basis, to determine whether the employee wants to discuss the test result. In making this contact, you must explain to the employee that, if he or she declines to discuss the result, you will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.
- (b) As the MRO, staff under your personal supervision may conduct this initial contact for you.
  - (1) This staff contact must be limited to scheduling the discussion between you and the employee and explaining the consequences of the employee's declining to speak with you (*i.e.*, that the MRO will verify the test without input from the employee). If the employee declines to speak with you, the staff person must document the employee's decision, including the date and time.
  - (2) A staff person must not gather any medical information or information concerning possible explanations for the test result.
  - (3) A staff person may advise an employee to have medical information (e.g., prescriptions, information forming the basis of a legitimate medical explanation for a confirmed positive test result) ready to present at the interview with the MRO.
  - (4) Since you are required to speak personally with the employee, face-to-face or on the phone, your staff must not inquire if the employee wishes to speak with you.

- (c) As the MRO, you or your staff must make reasonable efforts to reach the employee at the day and evening telephone numbers listed on the CCF. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF. If you or your staff cannot reach the employee directly after making these efforts, you or your staff must take the following steps:
- (1) Document the efforts you made to contact the employee, including dates and times. If both phone numbers are incorrect (e.g., disconnected, wrong number), you may take the actions listed in paragraph (c)(2) of this section without waiting the full 24-hour period.
  - (2) Contact the DER, instructing the DER to contact the employee.
    - (i) You must simply direct the DER to inform the employee to contact you.
    - (ii) You must not inform the DER that the employee has a confirmed positive, adulterated, substituted, or invalid test result.
    - (iii) You must document the dates and times of your attempts to contact the DER, and you must document the name of the DER you contacted and the date and time of the contact.
- (d) As the DER, you must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If you successfully contact the employee (i.e., actually talk to the employee), you must document the date and time of the contact, and inform the MRO. You must inform the employee that he or she should contact the MRO immediately. You must also inform the employee of the consequences of failing to contact the MRO within the next 72 hours (see § 40.133(a)(2)).
- (1) As the DER, you must not inform anyone else working for the employer that you are seeking to contact the employee on behalf of the MRO.
  - (2) If, as the DER, you have made all reasonable efforts to contact the employee but failed to do so, you may place the employee on temporary medically unqualified status or medical leave. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF.
    - (i) As the DER, you must document the dates and times of these efforts.
    - (ii) If, as the DER, you are unable to contact the employee within this 24-hour period, you must leave a message for the employee by any practicable means (e.g., voice mail, e-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004]

**§ 40.133 Without interviewing the employee, under what circumstances may the MRO verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid?**

- (a) As the MRO, you normally may verify a confirmed positive test (for any drug or drug metabolite, including opiates), or as a refusal to test because of adulteration or substitution, only after interviewing the employee as provided in §§ 40.135-40.145 . However, there are three circumstances in which you may verify such a result without an interview:

- (1) You may verify a test result as a positive or refusal to test, as applicable, if the employee expressly declines the opportunity to discuss the test with you. You must maintain complete documentation of this occurrence, including notation of informing, or attempting to inform, the employee of the consequences of not exercising the option to speak with the you.
  - (2) You may verify a test result as a positive or refusal to test, as applicable, if the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee.
  - (3) You may verify a test result as a positive or refusal to test, as applicable, if neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which the MRO receives the confirmed test result from the laboratory.
- (b) As the MRO, you may verify an invalid test result as cancelled (with instructions to recollect immediately under direct observation) without interviewing the employee, as provided at § 40.159:
- (1) If the employee expressly declines the opportunity to discuss the test with you;
  - (2) If the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee; or
  - (3) If neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which you received the confirmed invalid test result from the laboratory.
- (c) As the MRO, after you verify a test result as a positive or as a refusal to test under this section, you must document the date and time and reason, following the instructions in § 40.163. For a cancelled test due to an invalid result under this section, you must follow the instructions in § 40.159(a)(5).
- (d) As the MRO, after you have verified a test result under this section and reported the result to the DER, you must allow the employee to present information to you within 60 days of the verification to document that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided. On the basis of such information, you may reopen the verification, allowing the employee to present information concerning whether there is a legitimate medical explanation of the confirmed test result.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35971, June 25, 2008]

#### **§ 40.135 What does the MRO tell the employee at the beginning of the verification interview?**

- (a) As the MRO, you must tell the employee that the laboratory has determined that the employee's test result was positive, adulterated, substituted, or invalid, as applicable. You must also tell the employee of the drugs for which his or her specimen tested positive, or the basis for the finding of adulteration or substitution.
- (b) You must explain the verification interview process to the employee and inform the employee that your decision will be based on information the employee provides in the interview.
- (c) You must explain that, if further medical evaluation is needed for the verification process, the employee must comply with your request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.

- (d) As the MRO, you must warn an employee who has a confirmed positive, adulterated, substituted or invalid test that you are required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives you in the verification process without the employee's consent (see § 40.327).
  - (1) You must give this warning to the employee before obtaining any medical information as part of the verification process.
  - (2) For purposes of this paragraph (d), medical information includes information on medications or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.
  - (3) For purposes of this paragraph (d), the persons to whom this information may be provided include the employer, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), DOT, another Federal safety agency (e.g., the NTSB), or any state safety agency as required by state law.
- (e) You must also advise the employee that, before informing any third party about any medication the employee is using pursuant to a legally valid prescription consistent with the Controlled Substances Act, you will allow 5 business days from the date you report the verified negative result for the employee to have the prescribing physician contact you to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If, in your reasonable medical judgment, a medical qualification issue or a significant safety risk remains after you communicate with the employee's prescribing physician or after 5 business days, whichever is shorter, you must follow § 40.327. If, as the MRO, you receive information that eliminates the medical qualification issue or significant safety risk, you must transmit this information to any third party to whom you previously provided information under § 40.327.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 82 FR 52245, Nov. 13, 2017]

#### **§ 40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, semi-synthetic opioids, or PCP?**

- (a) As the MRO, you must verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (i.e., hydrocodone, hydromorphone, oxycodone, and oxymorphone), and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in his or her system. In determining whether an employee's legally valid prescription consistent with the Controlled Substances Act for a substance in these categories constitutes a legitimate medical explanation, you must not question whether the prescribing physician should have prescribed the substance.
- (b) You must offer the employee an opportunity to present a legitimate medical explanation in all cases.
- (c) The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the test result, if you determine that there is a reasonable basis to believe that the employee will be able to produce relevant evidence concerning a legitimate medical explanation within that time.
- (d) If you determine that there is a legitimate medical explanation, you must verify the test result as negative. Otherwise, you must verify the test result as positive.

- (e) In determining whether a legitimate medical explanation exists, you may consider the employee's use of a medication from a foreign country. You must exercise your professional judgment consistently with the following principles:
- (1) There can be a legitimate medical explanation only with respect to a substance that is obtained legally in a foreign country.
  - (2) There can be a legitimate medical explanation only with respect to a substance that has a legitimate medical use. Use of a drug of abuse (e.g., heroin, PCP, marijuana) or any other substance (see § 40.151(f) and (g)) that cannot be viewed as having a legitimate medical use can never be the basis for a legitimate medical explanation, even if the substance is obtained legally in a foreign country.
  - (3) Use of the substance can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended medical purpose.
  - (4) Even if you find that there is a legitimate medical explanation under this paragraph (e) and verify a test negative, you may have a responsibility to raise fitness-for-duty considerations with the employer (see § 40.327).

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

### **§ 40.139 On what basis does the MRO verify test results involving 6-acetylmorphine, codeine, and morphine?**

As the MRO, you must proceed as follows when you receive a laboratory confirmed positive opiate result:

- (a) If the laboratory confirms the presence of 6-acetylmorphine (6-AM) in the specimen, you must verify the test result positive.
- (b) In the absence of 6-AM, if the laboratory confirms the presence of either morphine or codeine at 15,000 ng/mL or above, you must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see § 40.137). Consumption of food products (e.g., poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.
- (c) For all other codeine and morphine positive results, you must verify a confirmed positive test result only if you determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (*i.e.*, morphine, codeine, or heroin).
  - (1) As an MRO, it is your responsibility to use your best professional and ethical judgement and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgement include, but are not limited to, the following:
    - (i) Recent needle tracks;
    - (ii) Behavioral and psychological signs of acute opiate intoxication or withdrawal;
    - (iii) Clinical history of unauthorized use recent enough to have produced the laboratory test result;
    - (iv) Use of a medication from a foreign country. See § 40.137(e) for guidance on how to make this determination.

- (2) In order to establish the clinical evidence referenced in paragraphs (c)(1)(i) and (ii) of this section, personal observation of the employee is essential.
  - (i) Therefore, you, as the MRO, must conduct, or cause another physician to conduct, a face-to-face examination of the employee.
  - (ii) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph (c)(1)(iii) or (iv) of this section.
- (3) To be the basis of a verified positive result for codeine or morphine, the clinical evidence you find must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you must not verify the test positive for codeine. The admission must be for the substance that was found through the actual drug test.)
- (4) As the MRO, you have the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in this paragraph (c). If you cannot make this determination (e.g., there is not sufficient clinical evidence or history), you must verify the test as negative. The employee does not need to show you that a legitimate medical explanation exists if no clinical evidence is established.

[77 FR 26473, May 4, 2012, as amended at 82 FR 52245, Nov. 13, 2017]

#### **§ 40.141 How does the MRO obtain information for the verification decision?**

As the MRO, you must do the following as you make the determinations needed for a verification decision:

- (a) You must conduct a medical interview. You must review the employee's medical history and any other relevant biomedical factors presented to you by the employee. You may direct the employee to undergo further medical evaluation by you or another physician.
- (b) If the employee asserts that the presence of a drug or drug metabolite in his or her specimen results from taking prescription medication (i.e., a legally valid prescription consistent with the Controlled Substances Act), you must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides. You may contact the employee's physician or other relevant medical personnel for further information. You may request an HHS-certified laboratory with validated protocols (see § 40.81(c)) to conduct testing for D,L stereoisomers of amphetamine and methamphetamine or testing for tetrahydrocannabinavarin (THC- V) when verifying lab results, as you determine necessary.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

#### **§ 40.143 [Reserved]**

#### **§ 40.145 On what basis does the MRO verify test results involving adulteration or substitution?**

- (a) As an MRO, when you receive a laboratory report that a specimen is adulterated or substituted, you must treat that report in the same way you treat the laboratory's report of a confirmed positive for a drug or drug metabolite.
- (b) You must follow the same procedures used for verification of a confirmed positive test for a drug or drug metabolite (see §§ 40.129-40.135, 40.141, 40.151), except as otherwise provided in this section.

- (c) In the verification interview, you must explain the laboratory findings to the employee and address technical questions or issues the employee may raise.
- (d) You must offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings with respect to presence of the adulterant in, or the creatinine and specific gravity findings for, the specimen.
- (e) The employee has the burden of proof that there is a legitimate medical explanation.
  - (1) To meet this burden in the case of an adulterated specimen, the employee must demonstrate that the adulterant found by the laboratory entered the specimen through physiological means.
  - (2) To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine through physiological means, meeting the creatinine concentration criterion of less than 2 mg/dL and the specific gravity criteria of less than or equal to 1.0010 or greater than or equal to 1.0200 (see § 40.93(b)).
  - (3) The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the specimen, if you determine that there is a reasonable basis to believe that the employee will be able to produce relevant evidence supporting a legitimate medical explanation within that time.
- (f) As the MRO or the employer, you are not responsible for arranging, conducting, or paying for any studies, examinations or analyses to determine whether a legitimate medical explanation exists.
- (g) As the MRO, you must exercise your best professional judgment in deciding whether the employee has established a legitimate medical explanation.
  - (1) If you determine that the employee's explanation does not present a reasonable basis for concluding that there may be a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution, as applicable.
  - (2) If you believe that the employee's explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, you must direct the employee to obtain, within the five-day period set forth in paragraph (e)(3) of this section, a further medical evaluation. This evaluation must be performed by a licensed physician (the "referral physician"), acceptable to you, with expertise in the medical issues raised by the employee's explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
    - (i) As the MRO or employer, you are not responsible for finding or paying a referral physician. However, on request of the employee, you must provide reasonable assistance to the employee's efforts to find such a physician. The final choice of the referral physician is the employee's, as long as the physician is acceptable to you.
    - (ii) As the MRO, you must consult with the referral physician, providing guidance to him or her concerning his or her responsibilities under this section. As part of this consultation, you must provide the following information to the referral physician:
      - (A) That the employee was required to take a DOT drug test, but the laboratory reported that the specimen was adulterated or substituted, which is treated as a refusal to test;
      - (B) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;

- (C) That the referral physician must agree to follow the requirements of paragraphs (g)(3) through (g)(4) of this section; and
  - (D) That the referral physician must provide you with a signed statement of his or her recommendations.
- (3) As the referral physician, you must evaluate the employee and consider any evidence the employee presents concerning the employee's medical explanation. You may conduct additional tests to determine whether there is a legitimate medical explanation. Any additional urine tests must be performed in an HHS-certified laboratory.
- (4) As the referral physician, you must then make a written recommendation to the MRO about whether the MRO should determine that there is a legitimate medical explanation. As the MRO, you must seriously consider and assess the referral physician's recommendation in deciding whether there is a legitimate medical explanation.
- (5) As the MRO, if you determine that there is a legitimate medical explanation, you must cancel the test and inform ODAPC in writing of the determination and the basis for it (e.g., referral physician's findings, evidence produced by the employee).
- (6) As the MRO, if you determine that there is not a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution.
- (h) The following are examples of types of evidence an employee could present to support an assertion of a legitimate medical explanation for a substituted result.
- (1) Medically valid evidence demonstrating that the employee is capable of physiologically producing urine meeting the creatinine and specific gravity criteria of § 40.93(b).
    - (i) To be regarded as medically valid, the evidence must have been gathered using appropriate methodology and controls to ensure its accuracy and reliability.
    - (ii) Assertion by the employee that his or her personal characteristics (e.g., with respect to race, gender, weight, diet, working conditions) are responsible for the substituted result does not, in itself, constitute a legitimate medical explanation. To make a case that there is a legitimate medical explanation, the employee must present evidence showing that the cited personal characteristics actually result in the physiological production of urine meeting the creatinine and specific gravity criteria of § 40.93(b).
  - (2) Information from a medical evaluation under paragraph (g) of this section that the individual has a medical condition that has been demonstrated to cause the employee to physiologically produce urine meeting the creatinine and specific gravity criteria of § 40.93(b).
    - (i) A finding or diagnosis by the physician that an employee has a medical condition, in itself, does not constitute a legitimate medical explanation.
    - (ii) To establish there is a legitimate medical explanation, the employee must demonstrate that the cited medical condition actually results in the physiological production of urine meeting the creatinine and specific gravity criteria of § 40.93(b).

[65 FR 79526, Dec. 19, 2000, as amended at 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004]

## § 40.147 [Reserved]



### § 40.149 May the MRO change a verified drug test result?

- (a) As the MRO, you may change a verified test result only in the following situations:
- (1) When you have reopened a verification that was done without an interview with an employee (see § 40.133(d)).
  - (2) If you receive information, not available to you at the time of the original verification, demonstrating that the laboratory made an error in identifying (e.g., a paperwork mistake) or testing (e.g., a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. You verified the test results as reported to you. Then the laboratory notifies you that it mixed up the two test results, and X was really negative and Y was really positive. You would change X's test result from positive to negative and contact Y to conduct a verification interview.
  - (3) If, within 60 days of the original verification decision -
    - (i) You receive information that could not reasonably have been provided to you at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s)/metabolite(s) in the employee's specimen; or
    - (ii) You receive credible new or additional evidence that a legitimate medical explanation for an adulterated or substituted result exists.
- Example to paragraph (a)(3):* If the employee's physician provides you a valid prescription that he or she failed to find at the time of the original verification, you may change the test result from positive to negative if you conclude that the prescription provides a legitimate medical explanation for the drug(s)/metabolite(s) in the employee's specimen.
- (4) If you receive the information in paragraph (a)(3) of this section after the 60-day period, you must consult with ODAPC prior to changing the result.
  - (5) When you have made an administrative error and reported an incorrect result.
- (b) If you change the result, you must immediately notify the DER in writing, as provided in §§ 40.163-40.165.
- (c) You are the only person permitted to change a verified test result, such as a verified positive test result or a determination that an individual has refused to test because of adulteration or substitution. This is because, as the MRO, you have the sole authority under this part to make medical determinations leading to a verified test (e.g., a determination that there was or was not a legitimate medical explanation for a laboratory test result). For example, an arbitrator is not permitted to overturn the medical judgment of the MRO that the employee failed to present a legitimate medical explanation for a positive, adulterated, or substituted test result of his or her specimen.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 73 FR 35971, June 25, 2008]

### § 40.151 What are MROs prohibited from doing as part of the verification process?

As an MRO, you are prohibited from doing the following as part of the verification process:

- (a) You must not consider any evidence from tests of urine samples or other body fluids or tissues (e.g., blood or hair samples) that are not collected or tested in accordance with this part. For example, if an employee tells you he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result or a DNA test result questioning the identity of his DOT specimen, you are required to ignore this test result.
- (b) It is not your function to make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (e.g., concerning allegations that the collector left the area or left open urine containers where other people could access them).
- (c) It is not your function to determine whether the employer should have directed that a test occur. For example, if an employee tells you that the employer misidentified her as the subject of a random test, or directed her to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency drug or alcohol regulation, you must inform the employee that you cannot play a role in deciding these issues.
- (d) It is not your function to consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may tell you that someone slipped amphetamines into her drink at a party, that she unknowingly ingested a marijuana brownie, or that she traveled in a closed car with several people smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, you must not declare a test as negative based on an explanation of this kind.
- (e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted).
- (f) You must not accept an assertion of consumption or other use of a hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. You also must not accept such an explanation related to consumption of coca teas as a basis for verifying a cocaine test result as negative. Consuming or using such a product is not a legitimate medical explanation.
- (g) You must not accept an assertion that there is a legitimate medical explanation for the presence of PCP, 6-AM, MDMA, MDA, or MDEA in a specimen.
- (h) You must not accept, as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or glutaraldehyde entered a specimen through physiological means. There are no physiological means through which these substances can enter a specimen.
- (i) You must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce urine with no detectable creatinine. There are no physiological means through which a person can produce a urine specimen having this characteristic.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 75 FR 49863, Aug. 16, 2010]

### § 40.153 How does the MRO notify employees of their right to a test of the split specimen?

- (a) As the MRO, when you have verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, you must notify the employee of his or her right to have the split specimen tested. You must also notify the employee of the procedures for requesting a test of the split specimen.
- (b) You must inform the employee that he or she has 72 hours from the time you provide this notification to him or her to request a test of the split specimen.
- (c) You must tell the employee how to contact you to make this request. You must provide telephone numbers or other information that will allow the employee to make this request. As the MRO, you must have the ability to receive the employee's calls at all times during the 72 hour period (e.g., by use of an answering machine with a "time stamp" feature when there is no one in your office to answer the phone).
- (d) You must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (see § 40.173).
- (e) You must tell the employee that additional tests of the specimen e.g., DNA tests) are not authorized.

### § 40.155 What does the MRO do when a negative or positive test result is also dilute?

- (a) When the laboratory reports that a specimen is dilute, you must, as the MRO, report to the DER that the specimen, in addition to being negative or positive, is dilute.
- (b) You must check the "dilute" box (Step 6) on Copy 2 of the CCF.
- (c) When you report a dilute specimen to the DER, you must explain to the DER the employer's obligations and choices under § 40.197, to include the requirement for an immediate recollection under direct observation if the creatinine concentration of a negative-dilute specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/dL.
- (d) If the employee's recollection under direct observation, in paragraph (c) of this section, results in another negative-dilute, as the MRO, you must:
  - (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
  - (2) If the CCF documentation shows that the recollection was directly observed as required, report this result to the DER as a negative-dilute result.
  - (3) If CCF documentation indicates that the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35971, June 25, 2008]

### § 40.157 [Reserved]

### § 40.159 What does the MRO do when a drug test result is invalid?

- (a) As the MRO, when the laboratory reports that the test result is an invalid result, you must do the following:

- (1) Discuss the laboratory results with a certifying scientist to determine if the primary specimen should be tested at another HHS certified laboratory. If the laboratory did not contact you as required by §§ 40.91(e) and 40.96(c), you must contact the laboratory.
- (2) If you and the laboratory have determined that no further testing is necessary, contact the employee and inform the employee that the specimen was invalid. In contacting the employee, use the procedures set forth in § 40.131.
- (3) After explaining the limits of disclosure (see §§ 40.135(d) and 40.327), you must determine if the employee has a medical explanation for the invalid result. You must inquire about the medications the employee may have taken.
- (4) If the employee gives an explanation that is acceptable, you must:
  - (i) Place a check mark in the “Test Cancelled” box (Step 6) on Copy 2 of the CCF and enter “Invalid Result” and “direct observation collection not required” on the “Remarks” line.
  - (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (*i.e.*, pre-employment, return-to-duty, or follow-up tests).
  - (iii) If a negative test result is required and the medical explanation concerns a situation in which the employee has a permanent or long-term medical condition that precludes him or her from providing a valid specimen, as the MRO, you must follow the procedures outlined at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.
- (5) If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, you must:
  - (i) Place a check mark in the “Test Cancelled” box (Step 6) on Copy 2 of the CCF and enter “Invalid Result” and “direct observation collection required” on the “Remarks” line.
  - (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation.
  - (iii) Instruct the employer to ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.
- (6) When the test result is invalid because pH is greater than or equal to 9.0 but less than or equal to 9.5 and the employee has no other medical explanation for the pH, you should consider whether there is evidence of elapsed time and increased temperature that could account for the pH value.
  - (i) You are authorized to consider the temperature conditions that were likely to have existed between the time of collection and transportation of the specimen to the laboratory, and the length of time between the specimen collection and arrival at the laboratory.
  - (ii) You may talk with the collection site and laboratory to discuss time and temperature issues, including any pertinent information regarding specimen storage.
  - (iii) If you determine that time and temperature account for the pH value, you must cancel the test and take no further action, as provided at paragraph (a)(4) of this section.
  - (iv) If you determine that time and temperature fail to account for the pH value, you must cancel the test and direct another collection under direct observation, as provided at paragraph (a)(5) of this section.

- (b) You may only report an invalid test result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.
- (c) If the employee admits to having adulterated or substituted the specimen, you must, on the same day, write and sign your own statement of what the employee told you. You must then report a refusal to test in accordance with § 40.163 .
- (d) If the employee admits to using a drug, you must, on the same day, write and sign your own statement of what the employee told you. You must then report that admission to the DER for appropriate action under DOT Agency regulations. This test will be reported as cancelled with the reason noted.
- (e) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for the same reason as reported for the first specimen, as the MRO, you must:
  - (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
  - (2) If the CCF review indicates that the recollection was directly observed as required, document that the employee had another specimen with an invalid result for the same reason.
  - (3) Follow the recording and reporting procedures at (a)(4)(i) and (ii) of this section.
  - (4) If a negative result is required (i.e., pre-employment, return-to-duty, or follow-up tests), follow the procedures at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.
  - (5) If the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.
- (f) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for a different reason than that reported for the first specimen, as the MRO, you must:
  - (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
  - (2) If the CCF review indicates that the recollection was directly observed as required, document that the employee had another specimen with an invalid result for a different reason.
  - (3) As the MRO, you should not contact the employee to discuss the result, but rather direct the DER to conduct an immediate recollection under direct observation without prior notification to the employee.
  - (4) If the CCF documentation indicates that the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.
- (g) If, as the MRO, you receive a laboratory invalid result in conjunction with a positive, adulterated, and/or substituted result and you verify any of those results as being a positive and/or refusal to test, you do not report the invalid result unless the split specimen fails to reconfirm the result(s) of the primary specimen.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008; 75 FR 49863, Aug. 16, 2010]

### § 40.160 What does the MRO do when a valid test result cannot be produced and a negative result is required?

- (a) If a valid test result cannot be produced and a negative result is required, (under § 40.159 (a)(5)(iii) and (e)(4)), as the MRO, you must determine if there is clinical evidence that the individual is currently an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation. In addition, if appropriate, you may also consult with the employee's physician to gather information you need to reach this determination.
- (b) If you do not personally conduct the medical evaluation, as the MRO, you must ensure that one is conducted by a licensed physician acceptable to you.
- (c) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
- (d) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report this to the employer as a negative test result with written notations regarding the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) and for the determination that no signs and symptoms of drug use exist.
  - (1) Check "Negative" (Step 6) on the CCF.
  - (2) Sign and date the CCF.
- (e) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding the results of the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purpose of an actual negative test result (i.e., the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test result is needed for that purpose).

[73 FR 35972, June 25, 2008]

### § 40.161 What does the MRO do when a drug test specimen is rejected for testing?

As the MRO, when the laboratory reports that the specimen is rejected for testing (e.g., because of a fatal or uncorrected flaw), you must do the following:

- (a) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter the reason on the "Remarks" line.
- (b) Report to the DER that the test is cancelled and the reason for cancellation, and that no further action is required unless a negative test is required (e.g., in the case of a pre-employment, return-to-duty, or follow-up test).

- (c) You may only report a test cancelled because of a rejected for testing test result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.

### § 40.162 What must MROs do with multiple verified results for the same testing event?

- (a) If the testing event is one in which there was one specimen collection with multiple verified non-negative results, as the MRO, you must report them all to the DER. For example, if you verified the specimen as being positive for marijuana and cocaine and as being a refusal to test because the specimen was also adulterated, as the MRO, you should report the positives and the refusal to the DER.
- (b) If the testing event was one in which two separate specimen collections (e.g., a specimen out of temperature range and the subsequent observed collection) were sent to the laboratory, as the MRO, you must:
  - (1) If both specimens were verified negative, report the result as negative.
  - (2) If either of the specimens was verified negative and the other was verified as one or more non-negative(s), report the non-negative result(s) only. For example, if you verified one specimen as negative and the other as a refusal to test because the second specimen was substituted, as the MRO you should report only the refusal to the DER.
    - (i) If the first specimen is reported as negative, but the result of the second specimen has not been reported by the laboratory, as the MRO, you should hold - not report - the result of the first specimen until the result of the second specimen is received.
    - (ii) If the first specimen is reported as non-negative, as the MRO, you should report the result immediately and not wait to receive the result of the second specimen.
  - (3) If both specimens were verified non-negative, report all of the non-negative results. For example, if you verified one specimen as positive and the other as a refusal to test because the specimen was adulterated, as the MRO, you should report the positive and the refusal results to the DER.
- (c) As an exception to paragraphs (a) and (b) of this section, as the MRO, you must follow procedures at § 40.159(g) when any verified non-negative result is also invalid.

[73 FR 35972, June 25, 2008, as amended at 82 FR 52245, Nov. 13, 2017]

### § 40.163 How does the MRO report drug test results?

- (a) As the MRO, it is your responsibility to report all drug test results to the employer.
- (b) You may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.
- (c) If you do not report test results using Copy 2 of the CCF for this purpose, you must provide a written report (e.g., a letter) for each test result. This report must, as a minimum, include the following information:
  - (1) Full name, as indicated on the CCF, of the employee tested;
  - (2) Specimen ID number from the CCF and the donor SSN or employee ID number;
  - (3) Reason for the test, if indicated on the CCF (e.g., random, post-accident);
  - (4) Date of the collection;

- (5) Date you received Copy 2 of the CCF;
  - (6) Result of the test (i.e., positive, negative, dilute, refusal to test, test cancelled) and the date the result was verified by the MRO;
  - (7) For verified positive tests, the drug(s)/metabolite(s) for which the test was positive;
  - (8) For cancelled tests, the reason for cancellation; and
  - (9) For refusals to test, the reason for the refusal determination (e.g., in the case of an adulterated test result, the name of the adulterant).
- (d) As an exception to the reporting requirements of paragraph (b) and (c) of this section, the MRO may report negative results using an electronic data file.
- (1) If you report negatives using an electronic data file, the report must contain, as a minimum, the information specified in paragraph (c) of this section, as applicable for negative test results.
  - (2) In addition, the report must contain your name, address, and phone number, the name of any person other than you reporting the results, and the date the electronic results report is released.
- (e) You must retain a signed or stamped and dated copy of Copy 2 of the CCF in your records. If you do not use Copy 2 for reporting results, you must maintain a copy of the signed or stamped and dated letter in addition to the signed or stamped and dated Copy 2. If you use the electronic data file to report negatives, you must maintain a retrievable copy of that report in a format suitable for inspection and auditing by a DOT representative.
- (f) You must not use Copy 1 of the CCF to report drug test results.
- (g) You must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, you must provide the test information in your possession to a SAP who consults with you (see § 40.293(g)).
- (h) You must maintain reports and records related to negatives and cancelled results for one year; you must maintain reports and records related to positives and refusals for five years, unless otherwise specified by applicable DOT agency regulations.

[66 FR 41952, Aug. 9, 2001, as amended at 75 FR 49863, Aug. 16, 2010; 75 FR 59107, Sept. 27, 2010; 76 FR 59578, Sept. 27, 2011]

### **§ 40.165 To whom does the MRO transmit reports of drug test results?**

- (a) As the MRO, you must report all drug test results to the DER, except in the circumstances provided for in § 40.345.
- (b) If the employer elects to receive reports of results through a C/TPA, acting as an intermediary as provided in § 40.345, you must report the results through the designated C/TPA.

### **§ 40.167 How are MRO reports of drug results transmitted to the employer?**

As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements:

- (a) You must report the results in a confidential manner.



- (b) You must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.
  - (1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see § 40.163).
  - (2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification.
  - (3) The MRO's report that you transmit to the employer must contain all of the information required by § 40.163 .
- (c) You must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.
  - (1) You must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see § 40.163(b) and (c)).
  - (2) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report.
- (d) In transmitting test results, you or the C/TPA and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.
- (e) MRO reports are not subject to modification or change by anyone other than the MRO, as provided in § 40.149(c).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

### **§ 40.169 Where is other information concerning the role of MROs and the verification process found in this regulation?**

You can find more information concerning the role of MROs in several sections of this part:

§ 40.3 - Definition.

§§ 40.47-40.49 - Correction of form and kit errors.

§ 40.67 - Role in direct observation and other atypical test situations.

§ 40.83 - Laboratory handling of fatal and correctable flaws.

§ 40.97 - Laboratory handling of test results and quantitative values.

§ 40.99 - Authorization of longer laboratory retention of specimens.

§ 40.101 - Relationship with laboratories; avoidance of conflicts of interest.

§ 40.171 - Request for test of split specimen.

§ 40.187 - Action concerning split specimen test results.

§ 40.193 - Role in "shy bladder" situations.

§ 40.195 - Role in cancelling tests.

§§ 40.199-40.203 - Documenting errors in tests.

§ 40.327 - Confidentiality and release of information.

§ 40.347 - Transfer of records.

§ 40.353 - Relationships with service agents.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

## Subpart H - Split Specimen Tests

### § 40.171 How does an employee request a test of a split specimen?

- (a) As an employee, when the MRO has notified you that you have a verified positive drug test and/or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen. There is no split specimen testing for an invalid result.
- (b)
  - (1) If, as an employee, you have not requested a test of the split specimen within 72 hours, you may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.
  - (2) As the MRO, if you conclude from the employee's information that there was a legitimate reason for the employee's failure to contact you within 72 hours, you must direct that the test of the split specimen take place, just as you would when there is a timely request.
- (c) When the employee makes a timely request for a test of the split specimen under paragraphs (a) and (b) of this section, you must, as the MRO, immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory. You must also document the date and time of the employee's request.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

### § 40.173 Who is responsible for paying for the test of a split specimen?

- (a) As the employer, you are responsible for making sure (e.g., by establishing appropriate accounts with laboratories for testing split specimens) that the MRO, first laboratory, and second laboratory perform the functions noted in §§ 40.175-40.185 in a timely manner, once the employee has made a timely request for a test of the split specimen.
- (b) As the employer, you must not condition your compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement to reimburse you for the costs of testing. For example, if you ask the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, you must ensure that the test takes place in a timely manner, even though this means that you pay for it.
- (c) As the employer, you may seek payment or reimbursement of all or part of the cost of the split specimen from the employee (e.g., through your written company policy or a collective bargaining agreement). This part takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required and the results released appropriately.

### § 40.175 What steps does the first laboratory take with a split specimen?

- (a) As the laboratory at which the primary and split specimen first arrive, you must check to see whether the split specimen is available for testing.
- (b) If the split specimen is unavailable or appears insufficient, you must then do the following:
  - (1) Continue the testing process for the primary specimen as you would normally. Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.
  - (2) Upon receiving a letter from the MRO instructing you to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing. Provide as much information as you can about the cause of the unavailability.
- (c) As the laboratory that tested the primary specimen, you are not authorized to open the split specimen under any circumstances (except when the split specimen is redesignated as provided in § 40.83).
- (d) When you receive written notice from the MRO instructing you to send the split specimen to another HHS-certified laboratory, you must forward the following items to the second laboratory:
  - (1) The split specimen in its original specimen bottle, with the seal intact;
  - (2) A copy of the MRO's written request; and
  - (3) A copy of Copy 1 of the CCF, which identifies the drug(s)/metabolite(s) or the validity criteria to be tested for.
- (e) You must not send to the second laboratory any information about the identity of the employee. Inadvertent disclosure does not, however, cause a fatal flaw.
- (f) This subpart does not prescribe who gets to decide which HHS-certified laboratory is used to test the split specimen. That decision is left to the parties involved.

**§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?**

- (a) As the laboratory testing the split specimen, you must test the split specimen for the drug(s)/drug metabolite(s) detected in the primary specimen.
- (b) You must conduct this test without regard to the cutoff concentrations of § 40.87.
- (c) If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported positive in the primary specimen, you must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). You should conduct the same validity tests as you would conduct on a primary specimen set forth in § 40.91.
- (d) In addition, if the test fails to reconfirm the presence of the drug(s)/ drug metabolite(s) reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

**§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?**

- (a) As the laboratory testing the split specimen, you must test the split specimen for the adulterant detected in the primary specimen, using the confirmatory test for the adulterant and using criteria in § 40.95 and confirmatory cutoff levels required by the HHS Mandatory Guidelines.
- (b) In addition, if the test fails to reconfirm the adulterant result reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

[73 FR 35973, June 25, 2008]

**§ 40.181 What does the second laboratory do with the split specimen when it is tested to reconfirm a substituted test result?**

As the laboratory testing the split specimen, you must test the split specimen using the confirmatory tests for creatinine and specific gravity, and using the confirmatory criteria set forth in § 40.93(b).

[73 FR 35973, June 25, 2008]

**§ 40.183 What information do laboratories report to MROs regarding split specimen results?**

- (a) As the laboratory responsible for testing the split specimen, you must report split specimen test results by checking the "Reconfirmed" box and/or the "Failed to Reconfirm" box (Step 5(b)) on Copy 1 of the CCF, as appropriate, and by providing clarifying remarks using current HHS Mandatory Guidelines requirements.
- (b) As the laboratory certifying scientist, enter your name, sign, and date the CCF.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

### § 40.185 Through what methods and to whom must a laboratory report split specimen results?

- (a) As the laboratory testing the split specimen, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or another service agent (e.g., a C/TPA).
- (b) You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF, which has been signed by the certifying scientist.
- (c) You must transmit the laboratory result to the MRO immediately, preferably on the same day or next business day as the result is signed and released.

### § 40.187 What does the MRO do with split specimen laboratory results?

As the MRO, the split specimen laboratory results you receive will fall into five categories. You must take the following action, as appropriate, when a laboratory reports split specimen results to you.

- (a) **Category 1:** The laboratory reconfirmed one or more of the primary specimen results. As the MRO, you must report to the DER and the employee the result(s) that was/were reconfirmed.
  - (1) In the case of a reconfirmed positive test(s) for drug(s) or drug metabolite(s), the positive is the final result.
  - (2) In the case of a reconfirmed adulterated or substituted result, the refusal to test is the final result.
  - (3) In the case of a combination positive and refusal to test results, the final result is both positive and refusal to test.
- (b) **Category 2:** The laboratory failed to reconfirm all of the primary specimen results because, as appropriate, drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. As the MRO, you must report to the DER and the employee that the test must be cancelled.
  - (1) As the MRO, you must inform ODAPC of the failure to reconfirm using the format in Appendix D to this part.
  - (2) In a case where the split failed to reconfirm because the substitution criteria were not met and the split specimen creatinine concentration was equal to or greater than 2mg/dL but less than or equal to 5mg/dL, as the MRO, you must, in addition to step (b)(1) of this paragraph, direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
  - (3) In a case where the split failed to reconfirm and the primary specimen's result was also invalid, direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
- (c) **Category 3:** The laboratory failed to reconfirm all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted.
  - (1) In the case where the laboratory failed to reconfirm all of the primary specimen results and the split was reported as invalid, as the MRO, you must:

- (i) Report to the DER and the employee that the test must be cancelled and the reason for the cancellation.
  - (ii) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
  - (iii) Inform ODAPC of the failure to reconfirm using the format in Appendix D to this part.
- (2) In the case where the laboratory failed to reconfirm any of the primary specimen results, and the split was reported as adulterated and/or substituted, as the MRO, you must:
- (i) Contact the employee and inform the employee that the laboratory has determined that his or her split specimen is adulterated and/or substituted, as appropriate.
  - (ii) Follow the procedures of § 40.145 to determine if there is a legitimate medical explanation for the laboratory finding of adulteration and/or substitution, as appropriate.
  - (iii) If you determine that there is a legitimate medical explanation for the adulterated and/or substituted test result, report to the DER and the employee that the test must be cancelled; and inform ODAPC of the failure to reconfirm using the format in Appendix D to this part.
  - (iv) If you determine that there is not a legitimate medical explanation for the adulterated and/or substituted test result, you must take the following steps:
    - (A) Report the test to the DER and the employee as a verified refusal to test. Inform the employee that he or she has 72 hours to request a test of the primary specimen to determine if the adulterant found in the split specimen is also present in the primary specimen and/or to determine if the primary specimen meets appropriate substitution criteria.
    - (B) Except when the request is for a test of the primary specimen and is being made to the laboratory that tested the primary specimen, follow the procedures of §§ 40.153, 40.171, 40.173, 40.179, 40.181, and 40.185, as appropriate.
    - (C) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen and/or to determine that the primary specimen meets appropriate substitution criteria, report your result to the MRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.
    - (D) If the test of the primary specimen reconfirms the adulteration and/or substitution finding of the split specimen, as the MRO you must report the result as a refusal to test as provided in paragraph (a)(2) of this section.
    - (E) If the test of the primary specimen fails to reconfirm the adulteration and/or substitution finding of the split specimen, as the MRO you must cancel the test, following procedures in paragraph (b) of this section.
- (d) **Category 4:** The laboratory failed to reconfirm one or more but not all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted. As the MRO, in the case where the laboratory reconfirmed one or more of the primary specimen result(s), you must follow procedures in paragraph (a) of this section and:

- (1) Report that the split was also reported as being invalid, adulterated, and/or substituted (as appropriate).
  - (2) Inform the DER to take action only on the reconfirmed result(s).
- (e) **Category 5:** The split specimen was not available for testing or there was no split laboratory available to test the specimen. As the MRO, you must:
- (1) Report to the DER and the employee that the test must be cancelled and the reason for the cancellation;
  - (2) Direct the DER to ensure the immediate recollection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection; and
  - (3) Notify ODAPC of the failure to reconfirm using the format in appendix D to this part.
- (f) For all split specimen results, as the MRO you must in Step 7 of Copy 2 of the CCF:
- (1) Report split specimen test results by checking the "Reconfirmed" box and/or the "Failed to Reconfirm" box, or the "Test Cancelled" box, as appropriate.
  - (2) , Enter your name, sign, and date.
  - (3) Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, see § 40.163) to the employer and keep a copy for your records. Transmit the document as provided in § 40.167.

[73 FR 35973, June 25, 2008, as amended at 75 FR 59108, Sept. 27, 2010]

## § 40.189 Where is other information concerning split specimens found in this regulation?

You can find more information concerning split specimens in several sections of this part:

§ 40.3 - Definition.

§ 40.65 - Quantity of split specimen.

§ 40.67 - Directly observed test when split specimen is unavailable.

§§ 40.71-40.73 - Collection process for split specimens.

§ 40.83 - Laboratory accessioning of split specimens.

§ 40.99 - Laboratory retention of split specimens.

§ 40.153 - MRO notice to employees on tests of split specimen.

§§ 40.193 and 40.201 - MRO actions on insufficient or unavailable split specimens.

Appendix D to Part 40 - Report format for split specimen failure to reconfirm.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

## Subpart I - Problems in Drug Tests

### § 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

- (a) As an employee, you have refused to take a drug test if you:
- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a));
  - (2) **Fail to remain at the testing site until the testing process is complete; Provided,** That an employee who leaves the testing site before the testing process commences (see § 40.63 (c)) for a pre-employment test is not deemed to have refused to test;
  - (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; *Provided,* That an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see § 40.63 (c)) for a pre-employment test is not deemed to have refused to test;
  - (4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§ 40.67(l) and 40.69(g));
  - (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.193(d)(2));
  - (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, § 40.197(b));
  - (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under § 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or
  - (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
  - (9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
  - (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
  - (11) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
- (c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.



- (d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.
  - (1) As the collector, you must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF.
  - (2) As the MRO, you must note the refusal by checking the "Refusal to Test" box in Step 6 on Copy 2 of the CCF, checking whether the specimen was adulterated or substituted and, if adulterated, noting the adulterant/reason. If there was another reason for the refusal, check "Other" in Step 6 on Copy 2 of the CCF, and note the reason next to the "Other" box and on the "Remarks" lines, as needed. You must then sign and date the CCF.
- (e) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 71 FR 49384, Aug. 23, 2006; 73 FR 35974, June 25, 2008; 75 FR 59108, Sept. 27, 2010]

### **§ 40.193 What happens when an employee does not provide a sufficient amount of urine for a drug test?**

- (a) This section prescribes procedures for situations in which an employee does not provide a sufficient amount of urine to permit a drug test (*i.e.*, 45 mL of urine).
- (b) As the collector, you must do the following:
  - (1) Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (see § 40.65(b) and (c)).
  - (2) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCF (Step 2), and inform the employee of, the time at which the three-hour period begins and ends.
  - (3) If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. This is a refusal to test.
  - (4) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. You must also discard any specimen the employee previously provided to include any specimen that is "out of temperature range" or shows signs of tampering. In the remarks section of the CCF that you will distribute to the MRO and DER, note the fact that the employee provided an "out of temperature range specimen" or "specimen that shows signs of tampering" and that it was discarded because the employee did not provide a second sufficient specimen.

- (5) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must send or fax these copies to the MRO and DER within 24 hours or the next business day.
- (c) As the DER, when the collector informs you that the employee has not provided a sufficient amount of urine (see paragraph (b)(4) of this section), you must, after consulting with the MRO, direct the employee to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
  - (1) As the MRO, if another physician will perform the evaluation, you must provide the other physician with the following information and instructions:
    - (i) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of urine to complete the test;
    - (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
    - (iii) That the referral physician must agree to follow the requirements of paragraphs (d) through (g) of this section.
  - (2) [Reserved]
- (d) As the referral physician conducting this evaluation, you must recommend that the MRO make one of the following determinations:
  - (1) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. As the MRO, if you accept this recommendation, you must:
    - (i) Check "Test Cancelled" (Step 6) on the CCF; and
    - (ii) Sign and date the CCF.
  - (2) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. As the MRO, if you accept this recommendation, you must:
    - (i) Check the "Refusal to Test" box and "Other" box in Step 6 on Copy 2 of the CCF and note the reason next to the "Other" box and on the "Remarks" lines, as needed.
    - (ii) Sign and date the CCF.
- (e) For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.
- (f) As the referral physician making the evaluation, after completing your evaluation, you must provide a written statement of your recommendations and the basis for them to the MRO. You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
- (g) If, as the referral physician making this evaluation in the case of a pre-employment test, you determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite

period of time, you must set forth your determination and the reasons for it in your written statement to the MRO. As the MRO, upon receiving such a report, you must follow the requirements of § 40.195, where applicable.

- (h) As the MRO, you must seriously consider and assess the referral physician's recommendations in making your determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. You must report your determination to the DER in writing as soon as you make it.
- (i) As the employer, when you receive a report from the MRO indicating that a test is cancelled as provided in paragraph (d)(1) of this section, you take no further action with respect to the employee. The employee remains in the random testing pool.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 82 FR 52245, Nov. 13, 2017]

### **§ 40.195 What happens when an individual is unable to provide a sufficient amount of urine for a pre-employment follow-up or return-to-duty test because of a permanent or long-term medical condition?**

- (a) This section concerns a situation in which an employee has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment follow-up or return-to-duty test and the condition involves a permanent or long-term disability. As the MRO in this situation, you must do the following:
  - (1) You must determine if there is clinical evidence that the individual is an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician and/or the physician who conducted the evaluation under § 40.193(d).
  - (2) If you do not personally conduct the medical evaluation, you must ensure that one is conducted by a licensed physician acceptable to you.
  - (3) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
- (b) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report the result to the employer as a negative test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist.
  - (1) Check "Negative" (Step 6) on the CCF.
  - (2) Sign and date the CCF.
- (c) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This report must state that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test,

it does not serve the purposes of a negative test (*i.e.*, the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).

- (d) For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever.
  - (1) Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters.
  - (2) Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in paragraph (d)(1) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

#### **§ 40.197 What happens when an employer receives a report of a dilute specimen?**

- (a) As the employer, if the MRO informs you that a positive drug test was dilute, you simply treat the test as a verified positive test. You must not direct the employee to take another test based on the fact that the specimen was dilute.
- (b) As an employer, if the MRO informs you that a negative test was dilute, take the following action:
  - (1) If the MRO directs you to conduct a recollection under direct observation (*i.e.*, because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (see § 40.155(c)), you must do so immediately.
  - (2) Otherwise (*i.e.*, if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.
    - (i) Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c)).
    - (ii) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (*e.g.*, conduct retests in pre-employment situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.
- (c) The following provisions apply to all tests you direct an employee to take under paragraph (b) of this section:
  - (1) You must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site;
  - (2) You must treat the result of the test you directed the employee to take under paragraph (b) of this section - and not a prior test - as the test result of record, on which you rely for purposes of this part;
  - (3) If the result of the test you directed the employee to take under paragraph (b)(1) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute.

- (4) If the result of the test you directed the employee to take under paragraph (b)(2) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph (b)(1) of this section, you must immediately do so.
- (5) If the employee declines to take a test you directed him or her to take under paragraph (b) of this section, the employee has refused the test for purposes of this part and DOT agency regulations.

[68 FR 31626, May 28, 2003, as amended at 69 FR 64867, Nov. 9, 2004; 73 FR 35974, June 25, 2008]

### § 40.199 What problems always cause a drug test to be cancelled?

- (a) As the MRO, when the laboratory discovers a “fatal flaw” during its processing of incoming specimens (see § 40.83), the laboratory will report to you that the specimen has been “Rejected for Testing” (with the reason stated). You must always cancel such a test.
- (b) The following are “fatal flaws”:
  - (1) There is no CCF;
  - (2) In cases where a specimen has been collected, there is no specimen submitted with the CCF;
  - (3) There is no printed collector's name and no collector's signature;
  - (4) Two separate collections are performed using one CCF;
  - (5) The specimen ID numbers on the specimen bottle and the CCF do not match;
  - (6) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, see § 40.83(h)); or
  - (7) Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be re-designated (see § 40.83(h)).
- (c) You must report the result as provided in § 40.161.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

### § 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

As the MRO, you must cancel a drug test when a laboratory reports that any of the following problems have occurred. You must inform the DER that the test was cancelled. You must also direct the DER to ensure that an additional collection occurs immediately, if required by the applicable procedures specified in paragraphs (a) through (e) of this section.

- (a) The laboratory reports an “Invalid Result.” You must follow applicable procedures in § 40.159 (recollection under direct observation may be required).
- (b) The laboratory reports the result as “Rejected for Testing.” You must follow applicable procedures in § 40.161 (a recollection may be required).

- (c) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. You must follow the applicable procedures in § 40.187(b) - no recollection is required in this case, unless the split specimen creatinine concentration for a substituted primary specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/ dL, or the primary specimen had an invalid result which was not reported to the DER. Both these cases require recollection under direct observation.
- (d) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results, and that the split specimen was invalid. You must follow the procedures in § 40.187(c)(1) - recollection under direct observation is required in this case.
- (e) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the split specimen was not available for testing or there was no split laboratory available to test the specimen. You must follow the applicable procedures in § 40.187(e) - recollection under direct observation is required in this case.
- (f) The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of urine. You must follow applicable procedures in § 40.193(d)(1) (no recollection is required in this case).

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35974, June 25, 2008]

### § 40.203 What problems cause a drug test to be cancelled unless they are corrected?

- (a) As the MRO, when a laboratory discovers a “correctable flaw” during its processing of incoming specimens (see § 40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to you that the specimen has been “Rejected for Testing” (with the reason stated).
- (b) The following is a “correctable flaw” that laboratories must attempt to correct: The collector's signature is omitted on the certification statement on the CCF.
- (c) As the MRO, when you discover a “correctable flaw” during your review of the CCF, you must cancel the test unless the flaw is corrected.
- (d) The following are correctable flaws that you must attempt to correct:
  - (1) The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the “Remarks” line of the CCF.
  - (2) The certifying scientist's signature is omitted on Copy 1 of the CCF for a positive, adulterated, substituted, or invalid test result.
  - (3) The collector uses a non-Federal form or an expired CCF for the test. This flaw may be corrected through the procedure set forth in § 40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures in this part in an HHS-certified laboratory.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 76 FR 59578, Sept. 27, 2011; 82 FR 52246, Nov. 13, 2017]

## § 40.205 How are drug test problems corrected?

- (a) As a collector, you have the responsibility of trying to successfully complete a collection procedure for each employee.
  - (1) If, during or shortly after the collection process, you become aware of any event that prevents the completion of a valid test or collection (e.g., a procedural or paperwork error), you must try to correct the problem promptly, if doing so is practicable. You may conduct another collection as part of this effort.
  - (2) If another collection is necessary, you must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.
- (b) If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem that can be corrected (see § 40.203), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not cancelled.
  - (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation on the "Remarks" line of the CCF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
  - (2) If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e., a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
  - (3) You must maintain the written documentation of a correction with the CCF.
  - (4) You must mark the CCF in such a way (e.g., stamp noting correction) as to make it obvious on the face of the CCF that you corrected the flaw.
- (c) If the correction does not take place, as the MRO you must cancel the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

## § 40.207 What is the effect of a cancelled drug test?

- (a) A cancelled drug test is neither positive nor negative.
  - (1) As an employer, you must not attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation (e.g., removal from a safety-sensitive position).

- (2) As an employer, you must not use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (*i.e.*, in the case of a pre-employment, return-to-duty, or follow-up test).
- (3) However, as an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part that require another test to be conducted (*e.g.*, §§ 40.159(a)(5) and 40.187(b)(2), (c)(1), and (e)).
- (b) A cancelled test does not count toward compliance with DOT requirements (*e.g.*, being applied toward the number of tests needed to meet the employer's minimum random testing rate).
- (c) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (*i.e.*, a test under company authority).

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35975, June 25, 2008]

### **§ 40.208 What problem requires corrective action but does not result in the cancellation of a test?**

- (a) If, as a laboratory, collector, employer, or other person implementing the DOT drug testing program, you become aware that the specimen temperature on the CCF was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range, you must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure that the problem does not recur.
- (b) This error does not result in the cancellation of the test.
- (c) As an employer or service agent, this error, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or Subpart R of this part.

[66 FR 41954, Aug. 9, 2001]

### **§ 40.209 What procedural problems do not result in the cancellation of a test and do not require correction?**

- (a) As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph (b) of this section.
- (b) No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:
  - (1) A minor administrative mistake (*e.g.*, the omission of the employee's middle initial, a transposition of numbers in the employee's social security number, the omission of the DOT Agency in Step 1-D of the CCF.)
  - (2) An error that does not affect employee protections under this part (*e.g.*, the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);



- (3) The collection of a specimen by a collector who is required to have been trained (see § 40.33), but who has not met this requirement;
  - (4) A delay in the collection process (see § 40.61(a));
  - (5) Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (see § 40.121(a) through (b)) but who has not met training and/or documentation requirements (see § 40.121(c) through (e));
  - (6) The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;
  - (7) The fact that a test was conducted in a facility that does not meet the requirements of § 40.41;
  - (8) If the specific name of the courier on the CCF is omitted or erroneous;
  - (9) Personal identifying information is inadvertently contained on the CCF (e.g., the employee signs his or her name on Copy 1); or
  - (10) Claims that the employee was improperly selected for testing.
- (c) As an employer or service agent, these types of errors, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or action under Subpart R of this part.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010]

### § 40.210 Are drug tests other than urine permitted under the regulations?

No. Drug tests other than on urine specimens are not authorized for testing under this part. Only urine specimens screened and confirmed at HHS certified laboratories (see § 40.81) are allowed for drug testing under this part. Point-of-collection urine testing or instant tests are not authorized.

[82 FR 52246, Nov. 13, 2017]

## Subpart J - Alcohol Testing Personnel

### § 40.211 Who conducts DOT alcohol tests?

- (a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.
- (b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
- (c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

### § 40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

- (a) You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. Procedures and guidance are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-3784, or on the ODAPC Web site, <http://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at (<https://www.transportation.gov/odapc/get-odapc-email-updates>).
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (b).
  - (1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue, SE., Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.
  - (2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (i.e., the ASD(s) or EBT(s)) you will be using.
  - (3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
  - (4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a “train the trainer” course.
- (c) **Initial Proficiency Demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).
  - (1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be an individual who meets the requirements of paragraph (b)(4) of this section.
  - (2) These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) that you will use as a BAT or STT.
  - (3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.
- (d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform STT or BAT functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

- (f) **Error Correction Training.** If you make a mistake in the alcohol testing process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.
- (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.
  - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
  - (3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.
- (h) **Other persons who may serve as BATs or STTs.**
- (1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.
  - (2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 5244, Feb. 2, 2010; 82 FR 52246, Nov. 13, 2017]

### **§ 40.215 What information about the DER do employers have to provide to BATs and STTs?**

As an employer, you must provide to the STTs and BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

### **§ 40.217 Where is other information on the role of STTs and BATs found in this regulation?**

You can find other information on the role and functions of STTs and BATs in the following sections of this part:

§ 40.3 - Definitions.

§ 40.223 - Responsibility for supervising employees being tested.

§§ 40.225-40.227 - Use of the alcohol testing form.

§§ 40.241-40.245 - Screening test procedures with ASDs and EBTs.

§§ 40.251-40.255 - Confirmation test procedures.

§ 40.261 - Refusals to test.

§§ 40.263-40.265 - Insufficient saliva or breath.

§ 40.267 - Problems requiring cancellation of tests.

§§ 40.269-40.271 - Correcting problems in tests.

## Subpart K - Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

### § 40.221 Where does an alcohol test take place?

- (a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.
- (b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of § 40.223.
- (c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
- (d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.
- (e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.
- (f) An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

### § 40.223 What steps must be taken to protect the security of alcohol testing sites?

- (a) If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.
  - (1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers, DERs, employee representatives authorized by the employer (e.g., on the basis of employer policy or labor-management agreement), and DOT agency representatives.
  - (2) You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.
  - (3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
- (b) As the BAT or STT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process (see §§ 40.241-40.255).
- (c) If you are operating an alcohol testing site, you must ensure that when an EBT or ASD is not being used for testing, you store it in a secure place.

- (d) If you are operating an alcohol testing site, you must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.
- (e) As a BAT or STT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.
  - (1) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.
  - (2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.
  - (3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

### § 40.225 What form is used for an alcohol test?

- (a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form. The ATF is found in Appendix G to this part. You may view this form on the ODAPC web site (<http://www.transportation.gov/odapc>).
- (b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:
  - (1) You may include other information needed for billing purposes, outside the boundaries of the form.
  - (2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.
  - (3) You may use an ATF that has the employer's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.
  - (4) You may use an ATF in which all pages are printed on white paper. You may modify the ATF by using colored paper, or have clearly discernable borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and blue for Copy 3.
  - (5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.
  - (6) As a BAT or STT, you may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.
- (c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 8529, Feb. 25, 2010; 75 FR 13009, Mar. 18, 2010; 82 FR 52246, Nov. 13, 2017]

### § 40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

- (a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.
- (b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with § 40.271(b) .

### § 40.229 What devices are used to conduct alcohol screening tests?

ASDs listed on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" and EBTs listed on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD for DOT alcohol tests only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and must not be used for confirmation tests.

[82 FR 52246, Nov. 13, 2017]

### § 40.231 What devices are used to conduct alcohol confirmation tests?

- (a) EBTs on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part.
- (b) To conduct a confirmation test, you must use an EBT that has the following capabilities:
  - (1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;
  - (2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;
  - (3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;
  - (4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
  - (5) Tests an air blank; and
  - (6) Performs an external calibration check.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

### § 40.233 What are the requirements for proper use and care of EBTs?

- (a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before ODAPC places the EBT on its Web page for "Approved Evidential Breath Measurement Devices."

- (1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).
  - (2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
- (b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.
- (c) As the user of the EBT (e.g., employer, service agent), you must do the following:
- (1) You must follow the manufacturer's instructions (see paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.
  - (2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."
  - (3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.
  - (4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in § 40.333(a)(3).
  - (5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

#### § 40.235 What are the requirements for proper use and care of ASDs?

- (a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA approves it and ODAPC places the device on its Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (e.g., temperature, altitude, humidity) that may affect the ASD's performance.
- (b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.
- (c) As the user of the ADS (e.g., employer, STT), you must follow the QAP instructions.
- (d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.
- (e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of § 40.233 .

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

## Subpart L - Alcohol Screening Tests

### § 40.241 What are the first steps in any alcohol screening test?

As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using:

- (a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.
- (b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.
  - (1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.
  - (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.
- (c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
- (d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.
- (e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.
- (f) Complete Step 1 of the ATF.
- (g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

### § 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

As the BAT or STT, you must take the following steps:

- (a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.



- (b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- (d) Show the employee the displayed test result.
- (e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.
- (f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.
- (g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the ATF.

#### **§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?**

- (a) As the STT or BAT, you must take the following steps when using the saliva ASD:
  - (1) Check the expiration date on the device or on the package containing the device and show it to the employee. You may not use the device after its expiration date.
  - (2) Open an individually wrapped or sealed package containing the device in the presence of the employee.
  - (3) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.
  - (4) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (a)(7) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.
  - (5) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.
  - (6)
    - (i) If you were unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section (e.g., the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.
    - (ii) The new device you use must be one that has been under your control or that of the employee before the test.
    - (iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

- (iv) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (e.g., the employee dropped the device) for the new test needing to be conducted.
  - (v) If you are unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.
  - (vi) You must then direct the employee to take a new test immediately, using an EBT for the screening test.
- (7) If you are able to successfully follow the procedures of paragraphs (a)(3)-(a)(5) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (a)(6) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.
- (8) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.
- (9) You must never re-use devices, swabs, gloves or other materials used in saliva testing.
- (10) You must note the fact that you used a saliva ASD in Step 3 of the ATF.
- (b) As the STT or BAT, you must take the following steps when using the breath tube ASD:
- (1) Check the expiration date on the detector device and the electronic analyzer or on the package containing the device and the analyzer and show it to the employee. You must not use the device or the analyzer after their expiration date. You must not use an analyzer which is not specifically pre-calibrated for the device being used in the collection.
  - (2) Remove the device from the package and secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.
  - (3) Break the tube's ampoule in the presence of the employee.
  - (4) Offer the employee the opportunity to use the device. If the employee chooses to use (e.g. hold) the device, instruct the employee to blow forcefully and steadily into the blowing end of device until the inflation bag fills with air (approximately 12 seconds).
  - (5) If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph (b)(4) of this section.
  - (6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth), remove the inflation bag, and prepare the device to be read by the analyzer in accordance with the manufacturer's directions.
  - (7)
    - (i) If you were unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section (e.g., the device breaks apart, the employee did not fill the inflation bag), you must discard the device and conduct a new test using a new one.
    - (ii) The new device you use must be one that has been under your control or that of the employer before the test.

- (iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)
  - (iv) You must offer the employee the choice of holding the device or having you hold it unless the employee, in your opinion, was responsible (e.g., the employee failed to fill the inflation bag) for the new test needing to be conducted.
  - (v) If you are unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.
  - (vi) You must then direct the employee to take a new test immediately, using another type of ASD (e.g., saliva device) or an EBT.
- (8) If you were able to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section and after having waited the required amount of time directed by the manufacturer for the detector device to incubate, you must place the device in the analyzer in accordance with the manufacturer's directions. The result must be read from the analyzer no earlier than the required incubation time of the device. In all cases, the result must be read within 15 minutes of the test.
  - (9) You must follow the manufacturer's instructions for determining the result of the test. You must show the analyzer result to the employee and record the result on Step 3 of the ATF.
  - (10) You must never re-use detector devices or any gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. Inflation bags and electronic analyzers may be re-used but only in accordance with the manufacturer's directions.
  - (11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

[67 FR 61522, Oct. 1, 2002, as amended at 72 FR 1299, Jan. 11, 2007]

#### **§ 40.247 What procedures does the BAT or STT follow after a screening test result?**

- (a) If the test result is an alcohol concentration of less than 0.02, as the BAT or STT, you must do the following:
  - (1) Sign and date Step 3 of the ATF; and
  - (2) Transmit the result to the DER in a confidential manner, as provided in § 40.255 .
- (b) If the test result is an alcohol concentration of 0.02 or higher, as the BAT or STT, you must direct the employee to take a confirmation test.
  - (1) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures beginning at § 40.251 .
  - (2) If you are not the BAT who will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.
  - (3) If the confirmation test will be performed at a different site from the screening test, you must take the following additional steps:
    - (i) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;

- (ii) Tell the employee the reason for the waiting period required by § 40.251(a) (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
  - (iii) Explain that following your instructions concerning the waiting period is to the employee's benefit;
  - (iv) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;
  - (v) Note on the "Remarks" line of the ATF that the waiting period instructions were provided;
  - (vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
  - (vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.
- (c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (see § 40.271).

## Subpart M - Alcohol Confirmation Tests

### § 40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

- (a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
  - (1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.
    - (i) If the confirmation test is taking place at a different location from the screening test (see § 40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.
    - (ii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.
    - (iii) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.
  - (2) Concerning the waiting period, you must tell the employee:
    - (i) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
    - (ii) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
    - (iii) That following your instructions concerning the waiting period is to the employee's benefit; and

- (iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
- (3) If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF.
- (b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You must note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test.
- (c) Complete Step 1 of the ATF.
- (d) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.
- (e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in § 40.253, not another screening test.
- (f) You must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.
- (g) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

### § 40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:

- (a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.
  - (1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.
  - (2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.
  - (3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.
  - (4) You must proceed with the test of the employee using another EBT, if one is available.
- (b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) You must ensure that you and the employee read the unique test number displayed on the EBT.
- (d) You must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- (e) You must show the employee the result displayed on the EBT.

- (f) You must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.
- (g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

### § 40.255 What happens next after the alcohol confirmation test result?

- (a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:
  - (1) Sign and date Step 3 of the ATF.
  - (2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF.
  - (3) If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, you must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.
  - (4) If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (see § 40.271).
  - (5) Immediately transmit the result directly to the DER in a confidential manner.
    - (i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.
    - (ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the ATF.
- (b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:
  - (1) If you receive any test results that are not in writing (e.g., by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.
  - (2) You must store all test result information in a way that protects confidentiality.

### Subpart N - Problems in Alcohol Testing

#### § 40.261 What is a refusal to take an alcohol test, and what are the consequences?

- (a) As an employee, you are considered to have refused to take an alcohol test if you:
  - (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.241(a));

- (2) Fail to remain at the testing site until the testing process is complete; *Provided*, That an employee who leaves the testing site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test;
  - (3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; *Provided*, That an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test;
  - (4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.265(c));
  - (5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at § 40.265(c);
  - (6) Fail to sign the certification at Step 2 of the ATF (see §§ 40.241(g) and 40.251(d)); or
  - (7) Fail to cooperate with any part of the testing process.
- (b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.
  - (c) As a BAT or an STT, or as the physician evaluating a “shy lung” situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).
  - (d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

### **§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?**

- (a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device).
  - (1) You must conduct a new screening test using a new screening device.
  - (2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the “Remarks” line of the ATF, and immediately notify the DER. This is a refusal to test.
  - (3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the “Remarks” line of the ATF and immediately notify the DER.
- (b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

## § 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

- (a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.
- (b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.
  - (1) If the employee refuses to make the attempt, you must discontinue the test, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
  - (2) If the employee again attempts and fails to provide a sufficient amount of breath, you may provide another opportunity to the employee to do so if you believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.
  - (3) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
  - (4) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.
  - (5) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.
- (c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath, you must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to you and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
  - (1) You are required to provide the physician who will conduct the evaluation with the following information and instructions:
    - (i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;
    - (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;
    - (iii) That the physician must provide you with a signed statement of his or her conclusions; and
    - (iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:
      - (A) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.
      - (B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.



- (C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.
- (2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
- (3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

### § 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

- (a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:
  - (1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see § 40.245(a)(8) for the saliva ASD and § 40.245(b)(8) for the breath tube ASD).
  - (2) The saliva ASD does not activate (see § 40.245(a)(7)); or
  - (3) The device is used for a test after the expiration date printed on the device or on its package (see § 40.245(a)(1) for the saliva ASD and § 40.245(b)(1) for the breath tube ASD).
  - (4) The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot (see § 40.245(b)(1)).
- (b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see § 40.253(c), (e) and (f)).
- (c) In the case of a confirmation test:
  - (1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see § 40.251(a)(1));
  - (2) The BAT does not conduct an air blank before the confirmation test (see § 40.253(a));
  - (3) There is not a 0.00 result on the air blank conducted before the confirmation test (see § 40.253(a)(1) and (2));
  - (4) The EBT does not print the result (see § 40.253(f)); or
  - (5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see § 40.233(a)(1) and (c)(3)).

[65 FR 79526, Dec. 19, 2000, as amended at 67 FR 61522, Oct. 1, 2002; 71 FR 49384, Aug. 23, 2006; 72 FR 1299, Jan. 11, 2007]

### § 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are “correctable flaws.” These problems are:

- (a) The BAT or STT does not sign the ATF (see §§ 40.247(a)(1) and 40.255(a)(1)).
- (b) The BAT or STT fails to note on the “Remarks” line of the ATF that the employee has not signed the ATF after the result is obtained (see § 40.255(a)(3)).
- (c) The BAT or STT uses a non-DOT form for the test (see § 40.225(a)).

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006]

### § 40.271 How are alcohol testing problems corrected?

- (a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.
  - (1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see § 40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.
  - (2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (e.g., manual operation) if you have been trained to do so in accordance with § 40.213(c) .
  - (3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.
  - (4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.
- (b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a “correctable flaw” (see § 40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.
  - (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the “Remarks” line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.
  - (2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and

the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

- (c) If you cannot correct the problem, you must cancel the test.

### § 40.273 What is the effect of a cancelled alcohol test?

- (a) A cancelled alcohol test is neither positive nor negative.
  - (1) As an employer, you must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).
  - (2) As an employer, you must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (e.g., in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).
  - (3) As an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part.
- (b) A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.
- (c) When a test must be cancelled, if you are the BAT, STT, or other person who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation.
- (d) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).

### § 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

- (a) As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not “fatal flaws” or “correctable flaws” listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.
- (b) No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. For example, it is inconsistent with this part to cancel a test based on a minor administrative mistake (e.g., the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.
- (c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations.

### § 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

No, other types of alcohol tests (e.g., blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.

## Subpart O - Substance Abuse Professionals and the Return-to-Duty Process

### § 40.281 Who is qualified to act as a SAP?

To be permitted to act as a SAP in the DOT drug and alcohol testing program, you must meet each of the requirements of this section:

- (a) **Credentials.** You must have one of the following credentials:
  - (1) You are a licensed physician (Doctor of Medicine or Osteopathy);
  - (2) You are a licensed or certified social worker;
  - (3) You are a licensed or certified psychologist;
  - (4) You are a licensed or certified employee assistance professional;
  - (5) You are a state-licensed or certified marriage and family therapist; or
  - (6) You are a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap>.
- (b) **Basic knowledge.** You must be knowledgeable in the following areas:
  - (1) You must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
  - (2) You must be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties.
  - (3) You must be knowledgeable about this part, the DOT agency regulations applicable to the employers for whom you evaluate employees, and the DOT SAP Guidelines. You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at <https://www.transportation.gov/odapc/get-odapc-email-updates>. DOT agency regulations, DOT SAP Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590 (202-366-3784), or on the ODAPC Web site (<http://www.transportation.gov/odapc>).
- (c) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (c).
  - (1) Qualification training must provide instruction on the following subjects:
    - (i) Background, rationale, and coverage of the Department's drug and alcohol testing program;
    - (ii) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;
    - (iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
    - (iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
    - (v) SAP qualifications and prohibitions;

- (vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
  - (vii) SAP consultation and communication with employers, MROs, and treatment providers;
  - (viii) Reporting and recordkeeping requirements;
  - (ix) Issues that SAPs confront in carrying out their duties under the program.
- (2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (3) You must meet the requirements of paragraphs (a), (b), and (c) of this section before you begin to perform SAP functions.
- (d) **Continuing education.** During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time you met the qualification training requirements of this section.
  - (2) Your continuing education activities must include documentable assessment tools to assist you in determining whether you have adequately learned the material.
- (e) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.

[65 FR 79526, Dec. 19, 2000, as amended at 69 FR 3022, Jan. 22, 2004; 71 FR 49384; Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 82 FR 52246, Nov. 13, 2017]

### § 40.283 How does a certification organization obtain recognition for its members as SAPs?

- (a) If you represent a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to § 40.281(a)(6), you may submit a written petition to DOT requesting a review of your petition for inclusion.
- (b) You must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on your petition.
- (c) You must also meet the minimum requirements of Appendix E to this part before DOT will act on your petition.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006]

### **§ 40.285 When is a SAP evaluation required?**

- (a) As an employer, when you have violated DOT drug and alcohol regulations, you cannot again perform any DOT safety-sensitive duties for any employer until and unless you complete the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
- (b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

### **§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?**

As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent.

### **§ 40.289 Are employers required to provide SAP and treatment services to employees?**

- (a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
- (b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of § 40.281 and that the employee successfully complies with the SAP's evaluation recommendations.
- (c) Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

### **§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?**

- (a) As a SAP, you are charged with:
  - (1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
  - (2) Referring the employee to an appropriate education and/or treatment program;
  - (3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;
  - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
  - (5) Providing the employee and employer with recommendations for continuing education and/or treatment.

- (b) As a SAP, you are not an advocate for the employer or employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

### **§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?**

As a SAP, for every employee who comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

- (a) Provide a comprehensive face-to-face assessment and clinical evaluation.
- (b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
  - (1) You must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
  - (2) You must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.
- (c) Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
- (d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.
- (e) You must provide a written report directly to the DER highlighting your specific recommendations for assistance (see § 40.311(c)).
- (f) For purposes of your role in the evaluation process, you must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. You must not take into consideration in any way, as a factor in determining what your recommendation will be, any of the following:
  - (1) A claim by the employee that the test was unjustified or inaccurate;
  - (2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (e.g., related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or
  - (3) Personal opinions you may have about the justification or rationale for drug and alcohol testing.
- (g) In the course of gathering information for purposes of your evaluation in the case of a drug-related violation, you may consult with the MRO. As the MRO, you are required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

### **§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?**

- (a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.

- (b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.

#### **§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?**

- (a) Except as provided in paragraph (b) of this section, no one (e.g., an employer, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.
- (b) The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).

#### **§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?**

- (a) As a SAP, upon your determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into an education and/or treatment program.
- (b) To prevent the appearance of a conflict of interest, you must not refer an employee requiring assistance to your private practice or to a person or organization from which you receive payment or to a person or organization in which you have a financial interest. You are precluded from making referrals to entities with which you are financially associated.
- (c) There are four exceptions to the prohibitions contained in paragraph (b) of this section. You may refer an employee to any of the following providers of assistance, regardless of your relationship with them:
  - (1) A public agency (e.g., treatment facility) operated by a state, county, or municipality;
  - (2) The employer or a person or organization under contract to the employer to provide alcohol or drug treatment and/or education services (e.g., the employer's contracted treatment provider);
  - (3) The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
  - (4) The sole source of therapeutically appropriate treatment reasonably available to the employee (e.g., the only treatment facility or education program reasonably located within the general commuting area).

#### **§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?**

- (a) As a SAP, after you have prescribed assistance under § 40.293, you must re-evaluate the employee to determine if the employee has successfully carried out your education and/or treatment recommendations.
  - (1) This is your way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.
  - (2) Your evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.
- (b) As the SAP making the follow-up evaluation determination, you must:



- (1) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and
- (2) Conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with your initial evaluation recommendations.

(c)

- (1) If the employee has demonstrated successful compliance, you must provide a written report directly to the DER highlighting your clinical determination that the employee has done so with your initial evaluation recommendation (see § 40.311(d)).
- (2) You may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment you recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program you prescribed, you may make a "successful compliance" determination even though you conclude that the employee has not yet completed the out-patient counseling you recommended or should continue in an aftercare program.

(d)

- (1) As the SAP, if you believe, as a result of the follow-up evaluation, that the employee has not demonstrated successful compliance with your recommendations, you must provide written notice directly to the DER (see § 40.311(e)).
- (2) As an employer who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations, you must not return the employee to the performance of safety-sensitive duties.
- (3) As the SAP, you may conduct additional follow-up evaluation(s) if the employer determines that doing so is consistent with the employee's progress as you have reported it and with the employer's policy and/or labor-management agreements.
- (4) As the employer, following a SAP report that the employee has not demonstrated successful compliance, you may take personnel action consistent with your policy and/or labor-management agreements.

**§ 40.303 What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?**

- (a) As a SAP, if you believe that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, you must provide recommendations for these services in your follow-up evaluation report (see § 40.311(d)(10)).
- (b) As an employer receiving a recommendation for these services from a SAP, you may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. You may monitor and document the employee's participation in the recommended services. You may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations. Nothing in this section permits an employer to fail to carry out its obligations with respect to follow-up testing (see § 40.309).
- (c) As an employee, you are obligated to comply with the SAP's recommendations for these services. If you fail or refuse to do so, you may be subject to disciplinary action by your employer.

### § 40.305 How does the return-to-duty process conclude?

- (a) As the employer, if you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
- (b) As an employer, you must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. However, you are not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that you have the discretion to make, subject to collective bargaining agreements or other legal requirements.
- (c) As a SAP or MRO, you must not make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee back to work in a safety-sensitive position.

### § 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

- (a) As a SAP, for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, you must establish a written follow-up testing plan. You do not establish this plan until after you determine that the employee has successfully complied with your recommendations for education and/or treatment.
- (b) You must present a copy of this plan directly to the DER (see § 40.311(d)(9)).
- (c) You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you should require that the employee have follow-up tests for both drugs and alcohol.
- (d) However, you must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.
  - (1) You may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (e.g., you may require one test a month during the 12-month period; you may require two tests per month during the first 6-month period and one test per month during the final 6-month period).
  - (2) You may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.
  - (3) You are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's.
  - (4) As the employer, you must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.
- (e) The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

*Example 1 to paragraph (e):* The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under § 40.25.

*Example 2 to paragraph (e):* The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.

- (f) As the SAP, you may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing. You must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.

### **§ 40.309 What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?**

- (a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
- (b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.
- (c) You cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.
- (d) You cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

### **§ 40.311 What are the requirements concerning SAP reports?**

- (a) As the SAP conducting the required evaluations, you must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in § 40.355(e)). You may, however, forward the document simultaneously to the DER and to a C/TPA.
- (b) As an employer, you must ensure that you receive SAP written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.

- (c) The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
  - (1) Employee's name and SSN;
  - (2) Employer's name and address;
  - (3) Reason for the assessment (specific violation of DOT regulations and violation date);
  - (4) Date(s) of the assessment;
  - (5) SAP's education and/or treatment recommendation; and
  - (6) SAP's telephone number.
  
- (d) The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
  - (1) Employee's name and SSN;
  - (2) Employer's name and address;
  - (3) Reason for the initial assessment (specific violation of DOT regulations and violation date);
  - (4) Date(s) of the initial assessment and synopsis of the treatment plan;
  - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
  - (6) Inclusive dates of employee's program participation;
  - (7) Clinical characterization of employee's program participation;
  - (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;
  - (9) Follow-up testing plan;
  - (10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
  - (11) SAP's telephone number.
  
- (e) The SAP's written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
  - (1) Employee's name and SSN;
  - (2) Employer's name and address;
  - (3) Reason for the initial assessment (specific DOT violation and date);
  - (4) Date(s) of initial assessment and synopsis of treatment plan;
  - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
  - (6) Inclusive dates of employee's program participation;

- (7) Clinical characterization of employee's program participation;
  - (8) Date(s) of the first follow-up evaluation;
  - (9) Date(s) of any further follow-up evaluation the SAP has scheduled;
  - (10) SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
  - (11) SAP's telephone number.
- (f) As a SAP, you must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
- (g) As a SAP, you are to maintain copies of your reports to employers for 5 years, and your employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. You must make these records available, on request, to DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.
- (h) As an employer, you must maintain your reports from SAPs for 5 years from the date you received them.

### **§ 40.313 Where is other information on SAP functions and the return-to-duty process found in this regulation?**

You can find other information on the role and functions of SAPs in the following sections of this part:

§ 40.3 - Definition.

§ 40.347 - Service agent assistance with SAP-required follow-up testing.

§ 40.355 - Transmission of SAP reports.

§ 40.329(c) - Making SAP reports available to employees on request.

Appendix E to Part 40 - SAP Equivalency Requirements for Certification Organizations.

### **Subpart P - Confidentiality and Release of Information**

#### **§ 40.321 What is the general confidentiality rule for drug and alcohol test information?**

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

- (a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

- (b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

### **§ 40.323 May program participants release drug or alcohol test information in connection with legal proceedings?**

- (a) As an employer, you may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
  - (1) These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
  - (2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The employer is authorized to respond to the court's order to produce the records.
- (b) In such a proceeding, you may release the information to the decisionmaker in the proceeding (e.g., the court in a lawsuit). You may release the information only with a binding stipulation that the decisionmaker to whom it is released will make it available only to parties to the proceeding.
- (c) If you are a service agent, and the employer requests its employee's drug or alcohol testing information from you to use in a legal proceeding as authorized in paragraph (a) of this section (e.g., the laboratory's data package), you must provide the requested information to the employer.
- (d) As an employer or service agent, you must immediately notify the employee in writing of any information you release under this section.

### **§ 40.325 [Reserved]**

### **§ 40.327 When must the MRO report medical information gathered in the verification process?**

- (a) As the MRO, you must, except as provided in paragraph (c) of this section, report drug test results and medical information you learned as part of the verification process to third parties without the employee's consent if you determine, in your reasonable medical judgment, that:
  - (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
  - (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.

- (b) The third parties to whom you are authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
- (c) If the law of a foreign country (e.g., Canada) prohibits you from providing medical information to the employer, you may comply with that prohibition.

### § 40.329 What information must laboratories, MROs, and other service agents release to employees?

- (a) As an MRO or service agent you must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. You may charge no more than the cost of preparation and reproduction for copies of these records.
- (b) As a laboratory, you must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (i.e., laboratory report and data package). You may charge no more than the cost of preparation and reproduction for copies of these records.
- (c) As a SAP, you must make available to an employee, on request, a copy of all SAP reports (see § 40.311). However, you must redact follow-up testing information from the report before providing it to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

### § 40.331 To what additional parties must employers and service agents release information?

As an employer or service agent you must release information under the following circumstances:

- (a) If you receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, you must provide the information to the identified person. For example, as an employer, when you receive a written request from a former employee to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.
- (b) If you are an employer, you must, upon request of DOT agency representatives, provide the following:
  - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
  - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.
  - (3) All items in paragraph (b)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.

- (c) If you are a service agent, you must, upon request of DOT agency representatives, provide the following:
  - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
  - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.
  - (3) All items in paragraph (c)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
- (d) If requested by the National Transportation Safety Board as part of an accident investigation, you must provide information concerning post-accident tests administered after the accident.
- (e) If requested by a Federal, state or local safety agency with regulatory authority over you or the employee, you must provide drug and alcohol test records concerning the employee.
- (f) Except as otherwise provided in this part, as a laboratory you must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. DNA testing and other types of identity testing are not authorized and ODAPC will not give permission for such testing. If a party seeks a court order directing you to release a specimen or part of a specimen contrary to any provision of this part, you must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of § 40.13). This part does not require you to disobey a court order, however.
- (g) Notwithstanding any other provision of this Part, as an employer of Commercial Motor Vehicle (CMV) drivers holding commercial driving licenses (CDLs) or as a third party administrator for owner-operator CMV drivers with CDLs, you are authorized to comply with State laws requiring you to provide to State CDL licensing authorities information about all violations of DOT drug and alcohol testing rules (including positive tests and refusals) by any CMV driver holding a CDL.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 33737, June 13, 2008; 82 FR 52247, Nov. 13, 2017]

### § 40.333 What records must employers keep?

- (a) As an employer, you must keep the following records for the following periods of time:
  - (1) You must keep the following records for five years:
    - (i) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
    - (ii) Records of verified positive drug test results;
    - (iii) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
    - (iv) SAP reports; and
    - (v) All follow-up tests and schedules for follow-up tests.
  - (2) You must keep records for three years of information obtained from previous employers under § 40.25 concerning drug and alcohol test results of employees.



- (3) You must keep records of the inspection, maintenance, and calibration of EBTs, for two years.
- (4) You must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.
- (b) You do not have to keep records related to a program requirement that does not apply to you (e.g., a maritime employer who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
- (c) You must maintain the records in a location with controlled access.
- (d) A service agent may maintain these records for you. However, you must ensure that you can produce these records at your principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, you must ensure that you can provide them within two business days.
- (e) If you store records electronically, where permitted by this part, you must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

## Subpart Q - Roles and Responsibilities of Service Agents

### § 40.341 Must service agents comply with DOT drug and alcohol testing requirements?

- (a) As a service agent, the services you provide to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.
- (b) If you do not comply, DOT may take action under the Public Interest Exclusions procedures of this part (see Subpart R of this part) or applicable provisions of other DOT agency regulations.

### § 40.343 What tasks may a service agent perform for an employer?

As a service agent, you may perform for employers the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.

### § 40.345 In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

- (a) As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).
- (b) The specific provisions of this part concerning which you may act as an intermediary are listed in Appendix F to this part. These are the only situations in which you may act as an intermediary. You are prohibited from doing so in all other situations.

- (c) In every case, you must ensure that, in transmitting information to employers, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit drug testing results from MROs to DERs, you must transmit each drug test result to the DER in compliance with the MRO requirements set forth in § 40.167 .

### § 40.347 What functions may C/TPAs perform with respect to administering testing?

As a C/TPA, except as otherwise specified in this part, you may perform the following functions for employers concerning random selection and other selections for testing.

- (a) You may operate random testing programs for employers and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) employers with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).
- (b) You may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
  - (1) If you combine employees from more than one transportation industry, you must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
  - (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
- (c) You may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither you nor the employer are permitted to randomly select employees from a “follow-up pool” for follow-up testing.

### § 40.349 What records may a service agent receive and maintain?

- (a) Except where otherwise specified in this part, as a service agent you may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. You do not need the employee's consent to receive and maintain these records.
- (b) You may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to employers of selected employees) on behalf of an employer.
- (c) If a service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to you, as a C/TPA or other service agent who maintains this information for the employer.
- (d) If you are serving as an intermediary in transmitting information that is required to be provided to the employer, you must ensure that it reaches the employer in the same time periods required elsewhere in this part.
- (e) You must ensure that you can make available to the employer within two business days any information the employer is asked to produce by a DOT agency representative.
- (f) On request of an employer, you must, at any time on the request of an employer, transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not

required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.

- (g) If you are planning to go out of business or your organization will be bought by or merged with another organization, you must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

### **§ 40.351 What confidentiality requirements apply to service agents?**

Except where otherwise specified in this part, as a service agent the following confidentiality requirements apply to you:

- (a) When you receive or maintain confidential information about employees (e.g., individual test results), you must follow the same confidentiality regulations as the employer with respect to the use and release of this information.
- (b) You must follow all confidentiality and records retention requirements applicable to employers.
- (c) You may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose you are a C/TPA that has employers X and Y as clients. Employee Jones works for X, and you maintain Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. You may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, you may not provide this information to employer Z, who is not a C/TPA member, without this consent.
- (d) You must not use blanket consent forms authorizing the release of employee testing information.
- (e) You must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic data bases.

### **§ 40.353 What principles govern the interaction between MROs and other service agents?**

As a service agent other than an MRO (e.g., a C/TPA), the following principles govern your interaction with MROs:

- (a) You may provide MRO services to employers, directly or through contract, if you meet all applicable provisions of this part.
- (b) If you employ or contract for an MRO, the MRO must perform duties independently and confidentially. When you have a relationship with an MRO, you must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.

- (c) Only your staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of your staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. You must ensure that MRO staff operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- (d) Like other MROs, an MRO you employ or contract with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, your staff cannot perform these functions.

### § 40.355 What limitations apply to the activities of service agents?

As a service agent, you are subject to the following limitations concerning your activities in the DOT drug and alcohol testing program.

- (a) You must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.
- (b) You must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to you, with you in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to your computer system, and you then assign the results to a particular MRO, is not permitted.
- (c) You must not transmit drug test results directly from the laboratory to the employer (by electronic or other means) or to a service agent who forwards them to the employer. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
- (d) You must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
- (e) Except as provided in paragraph (f) of this section, you must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to you, with you in turn sending them to the actual employer. However, you may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to you simultaneously with sending them to the DER.
- (f) As an exception to paragraph (e) of this section, you may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other self-employed individual.
- (g) Except as provided in paragraph (h) of this section, you must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the actual employer cannot delegate to a C/TPA. You may, however, provide advice and information to employers regarding these testing issues and how the employer should schedule required testing.
- (h) As an exception to paragraph (g) of this section, you may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.

- (i) Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.
- (j) As an exception to paragraph (i) of this section, you may make a determination that an employee has refused a drug or alcohol test, if:
  - (1) You schedule a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or
  - (2) As an MRO, you determine that an individual has refused to test on the basis of adulteration or substitution.
- (k) You must not act as a DER. For example, while you may be responsible for transmitting information to the employer about test results, you must not act on behalf of the employer in actions to remove employees from safety-sensitive duties.
- (l) In transmitting documents to laboratories, you must ensure that you send to the laboratory that conducts testing only Copy 1 of the CCF. You must not transmit other copies of the CCF or any ATFs to the laboratory.
- (m) You must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a C/TPA serving employers in the pipeline or motor carrier industry, you must not require employers to have provisions in their DOT plans that PHMSA or FMCSA regulations do not require.
- (n) You must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions you have performed, because of a payment dispute or other reasons.

*Example 1 to paragraph (n):* A laboratory that has tested a specimen must not delay transmitting the documentation of the test result to an MRO because of a billing or payment dispute with the MRO or a C/TPA.

*Example 2 to paragraph (n):* An MRO or SAP who has interviewed an employee must not delay sending a verified test result or SAP report to the employer because of such a dispute with the employer or employee.

*Example 3 to paragraph (n):* A collector who has performed a urine specimen collection must not delay sending the drug specimen and CCF to the laboratory because of a payment or other dispute with the laboratory or a C/TPA.

*Example 4 to paragraph (n):* A BAT who has conducted an alcohol test must not delay sending test result information to an employer or C/TPA because of a payment or other dispute with the employer or C/TPA.

- (o) While you must follow the DOT agency regulations, the actual employer remains accountable to DOT for compliance, and your failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the employer subject to enforcement action by the Department.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 75 FR 59108, Sept. 27, 2010]

## Subpart R - Public Interest Exclusions

### § 40.361 What is the purpose of a public interest exclusion (PIE)?

- (a) To protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules, the Department's policy is to ensure that employers conduct business only with responsible service agents.
- (b) The Department therefore uses PIEs to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or other DOT agency drug and alcohol testing regulations, has shown that it is not currently acting in a responsible manner.
- (c) A PIE is a serious action that the Department takes only to protect the public interest. We intend to use PIEs only to remedy situations of serious noncompliance. PIEs are not used for the purpose of punishment.
- (d) Nothing in this subpart precludes a DOT agency or the Inspector General from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

### § 40.363 On what basis may the Department issue a PIE?

- (a) If you are a service agent, the Department may issue a PIE concerning you if we determine that you have failed or refused to provide drug or alcohol testing services consistent with the requirements of this part or a DOT agency drug and alcohol regulation.
- (b) The Department also may issue a PIE if you have failed to cooperate with DOT agency representatives concerning inspections, complaint investigations, compliance and enforcement reviews, or requests for documents and other information about compliance with this part or DOT agency drug and alcohol regulations.

### § 40.365 What is the Department's policy concerning starting a PIE proceeding?

- (a) It is the Department's policy to start a PIE proceeding only in cases of serious, uncorrected noncompliance with the provisions of this part, affecting such matters as safety, the outcomes of test results, privacy and confidentiality, due process and fairness for employees, the honesty and integrity of the testing program, and cooperation with or provision of information to DOT agency representatives.
- (b) The following are examples of the kinds of serious noncompliance that, as a matter of policy, the Department views as appropriate grounds for starting a PIE proceeding. These examples are not intended to be an exhaustive or exclusive list of the grounds for starting a PIE proceeding. We intend them to illustrate the level of seriousness that the Department believes supports starting a PIE proceeding. The examples follow:
  - (1) For an MRO, verifying tests positive without interviewing the employees as required by this part or providing MRO services without meeting the qualifications for an MRO required by this part;
  - (2) For a laboratory, refusing to provide information to the Department, an employer, or an employee as required by this part; failing or refusing to conduct a validity testing program when required by this part; or a pattern or practice of testing errors that result in the cancellation of tests. (As a general matter of policy, the Department does not intend to initiate a PIE proceeding concerning a laboratory with respect to matters on which HHS initiates certification actions under its laboratory guidelines.);

- (3) For a collector, a pattern or practice of directly observing collections when doing so is unauthorized, or failing or refusing to directly observe collections when doing so is mandatory;
- (4) For collectors, BATs, or STTs, a pattern or practice of using forms, testing equipment, or collection kits that do not meet the standards in this part;
- (5) For a collector, BAT, or STT, a pattern or practice of “fatal flaws” or other significant uncorrected errors in the collection process;
- (6) For a laboratory, MRO or C/TPA, failing or refusing to report tests results as required by this part or DOT agency regulations;
- (7) For a laboratory, falsifying, concealing, or destroying documentation concerning any part of the drug testing process, including, but not limited to, documents in a “litigation package”;
- (8) For SAPs, providing SAP services while not meeting SAP qualifications required by this part or performing evaluations without face-to-face interviews;
- (9) For any service agent, maintaining a relationship with another party that constitutes a conflict of interest under this part (e.g., a laboratory that derives a financial benefit from having an employer use a specific MRO);
- (10) For any service agent, falsely representing that the service agent or its activities is approved or certified by the Department or a DOT agency (such representation includes, but is not limited to, the use of a Department or DOT agency logo, title, or emblem).
- (11) For any service agent, disclosing an employee's test result information to any party this part or a DOT agency regulation does not authorize, including by obtaining a “blanket” consent from employees or by creating a data base from which employers or others can retrieve an employee's DOT test results without the specific consent of the employee;
- (12) For any service agent, interfering or attempting to interfere with the ability of an MRO to communicate with the Department, or retaliating against an MRO for communicating with the Department;
- (13) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part; or
- (14) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (e.g., failure to properly conduct the selection process for random testing).

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017]

### **§ 40.367 Who initiates a PIE proceeding?**

The following DOT officials may initiate a PIE proceeding:

- (a) The drug and alcohol program manager of a DOT agency;
- (b) An official of ODAPC, other than the Director; or
- (c) The designee of any of these officials.

### **§ 40.369 What is the discretion of an initiating official in starting a PIE proceeding?**

- (a) Initiating officials have broad discretion in deciding whether to start a PIE proceeding.
- (b) In exercising this discretion, the initiating official must consider the Department's policy regarding the seriousness of the service agent's conduct (see § 40.365) and all information he or she has obtained to this point concerning the facts of the case. The initiating official may also consider the availability of the resources needed to pursue a PIE proceeding.
- (c) A decision not to initiate a PIE proceeding does not necessarily mean that the Department regards a service agent as being in compliance or that the Department may not use other applicable remedies in a situation of noncompliance.

### **§ 40.371 On what information does an initiating official rely in deciding whether to start a PIE proceeding?**

- (a) An initiating official may rely on credible information from any source as the basis for starting a PIE proceeding.
- (b) Before sending a correction notice (see § 40.373), the initiating official informally contacts the service agent to determine if there is any information that may affect the initiating official's determination about whether it is necessary to send a correction notice. The initiating official may take any information resulting from this contact into account in determining whether to proceed under this subpart.

### **§ 40.373 Before starting a PIE proceeding, does the initiating official give the service agent an opportunity to correct problems?**

- (a) If you are a service agent, the initiating official must send you a correction notice before starting a PIE proceeding.
- (b) The correction notice identifies the specific areas in which you must come into compliance in order to avoid being subject to a PIE proceeding.
- (c) If you make and document changes needed to come into compliance in the areas listed in the correction notice to the satisfaction of the initiating official within 60 days of the date you receive the notice, the initiating official does not start a PIE proceeding. The initiating official may conduct appropriate fact finding to verify that you have made and maintained satisfactory corrections. When he or she is satisfied that you are in compliance, the initiating official sends you a notice that the matter is concluded.

### **§ 40.375 How does the initiating official start a PIE proceeding?**

- (a) As a service agent, if your compliance matter is not correctable (see § 40.373(a)), or if have not resolved compliance matters as provided in § 40.373(c), the initiating official starts a PIE proceeding by sending you a notice of proposed exclusion (NOPE). The NOPE contains the initiating official's recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE.
- (b) The NOPE includes the following information:
  - (1) A statement that the initiating official is recommending that the Department issue a PIE concerning you;
  - (2) The factual basis for the initiating official's belief that you are not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part or are in serious noncompliance with a DOT agency drug and alcohol regulation;



- (3) The factual basis for the initiating official's belief that your noncompliance has not been or cannot be corrected;
  - (4) The initiating official's recommendation for the scope of the PIE;
  - (5) The initiating official's recommendation for the duration of the PIE; and
  - (6) A statement that you may contest the issuance of the proposed PIE, as provided in § 40.379.
- (c) The initiating official sends a copy of the NOPE to the ODAPC Director at the same time he or she sends the NOPE to you.

#### § 40.377 Who decides whether to issue a PIE?

- (a) The ODAPC Director, or his or her designee, decides whether to issue a PIE. If a designee is acting as the decisionmaker, all references in this subpart to the Director refer to the designee.
- (b) To ensure his or her impartiality, the Director plays no role in the initiating official's determination about whether to start a PIE proceeding.
- (c) There is a "firewall" between the initiating official and the Director. This means that the initiating official and the Director are prohibited from having any discussion, contact, or exchange of information with one another about the matter, except for documents and discussions that are part of the record of the proceeding.

#### § 40.379 How do you contest the issuance of a PIE?

- (a) If you receive a NOPE, you may contest the issuance of the PIE.
- (b) If you want to contest the proposed PIE, you must provide the Director information and argument in opposition to the proposed PIE in writing, in person, and/or through a representative. To contest the proposed PIE, you must take one or more of the steps listed in this paragraph (b) within 30 days after you receive the NOPE.
  - (1) You may request that the Director dismiss the proposed PIE without further proceedings, on the basis that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
  - (2) You may present written information and arguments, consistent with the provisions of § 40.381, contesting the proposed PIE.
  - (3) You may arrange with the Director for an informal meeting to present your information and arguments.
- (c) If you do not take any of the actions listed in paragraph (b) of this section within 30 days after you receive the NOPE, the matter proceeds as an uncontested case. In this event, the Director makes his or her decision based on the record provided by the initiating official (*i.e.*, the NOPE and any supporting information or testimony) and any additional information the Director obtains.

#### § 40.381 What information do you present to contest the proposed issuance of a PIE?

- (a) As a service agent who wants to contest a proposed PIE, you must present at least the following information to the Director:
  - (1) Specific facts that contradict the statements contained in the NOPE (see § 40.375(b)(2) and (3)). A general denial is insufficient to raise a genuine dispute over facts material to the issuance of a PIE;

- (2) Identification of any existing, proposed or prior PIE; and
- (3) Identification of your affiliates, if any.
- (b) You may provide any information and arguments you wish concerning the proposed issuance, scope and duration of the PIE (see § 40.375(b)(4) and (5)).
- (c) You may provide any additional relevant information or arguments concerning any of the issues in the matter.

### **§ 40.383 What procedures apply if you contest the issuance of a PIE?**

- (a) DOT conducts PIE proceedings in a fair and informal manner. The Director may use flexible procedures to allow you to present matters in opposition. The Director is not required to follow formal rules of evidence or procedure in creating the record of the proceeding.
- (b) The Director will consider any information or argument he or she determines to be relevant to the decision on the matter.
- (c) You may submit any documentary evidence you want the Director to consider. In addition, if you have arranged an informal meeting with the Director, you may present witnesses and confront any person the initiating official presents as a witness against you.
- (d) In cases where there are material factual issues in dispute, the Director or his or her designee may conduct additional fact-finding.
- (e) If you have arranged a meeting with the Director, the Director will make a transcribed record of the meeting available to you on your request. You must pay the cost of transcribing and copying the meeting record.

### **§ 40.385 Who bears the burden of proof in a PIE proceeding?**

- (a) As the proponent of issuing a PIE, the initiating official bears the burden of proof.
- (b) This burden is to demonstrate, by a preponderance of the evidence, that the service agent was in serious noncompliance with the requirements of this part for drug and/or alcohol testing-related services or with the requirements of another DOT agency drug and alcohol testing regulation.

### **§ 40.387 What matters does the Director decide concerning a proposed PIE?**

- (a) Following the service agent's response (see § 40.379(b)) or, if no response is received, after 30 days have passed from the date on which the service agent received the NOPE, the Director may take one of the following steps:
  - (1) In response to a request from the service agent (see § 40.379(b)(1)) or on his or her own motion, the Director may dismiss a PIE proceeding if he or she determines that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
    - (i) If the Director dismisses a proposed PIE under this paragraph (a), the action is closed with respect to the noncompliance alleged in the NOPE.
    - (ii) The Department may initiate a new PIE proceeding against you on the basis of different or subsequent conduct that is in noncompliance with this part or other DOT drug and alcohol testing rules.

- (2) If the Director determines that the initiating official's submission does not have complete information needed for a decision, the Director may remand the matter to the initiating official. The initiating official may resubmit the matter to the Director when the needed information is complete. If the basis for the proposed PIE has changed, the initiating official must send an amended NOPE to the service agent.
- (b) The Director makes determinations concerning the following matters in any PIE proceeding that he or she decides on the merits:
  - (1) Any material facts that are in dispute;
  - (2) Whether the facts support issuing a PIE;
  - (3) The scope of any PIE that is issued; and
  - (4) The duration of any PIE that is issued.

### **§ 40.389 What factors may the Director consider?**

This section lists examples of the kind of mitigating and aggravating factors that the Director may consider in determining whether to issue a PIE concerning you, as well as the scope and duration of a PIE. This list is not exhaustive or exclusive. The Director may consider other factors if appropriate in the circumstances of a particular case. The list of examples follows:

- (a) The actual or potential harm that results or may result from your noncompliance;
- (b) The frequency of incidents and/or duration of the noncompliance;
- (c) Whether there is a pattern or prior history of noncompliance;
- (d) Whether the noncompliance was pervasive within your organization, including such factors as the following:
  - (1) Whether and to what extent your organization planned, initiated, or carried out the noncompliance;
  - (2) The positions held by individuals involved in the noncompliance, and whether your principals tolerated their noncompliance; and
  - (3) Whether you had effective standards of conduct and control systems (both with respect to your own organization and any contractors or affiliates) at the time the noncompliance occurred;
- (e) Whether you have demonstrated an appropriate compliance disposition, including such factors as the following:
  - (1) Whether you have accepted responsibility for the noncompliance and recognize the seriousness of the conduct that led to the cause for issuance of the PIE;
  - (2) Whether you have cooperated fully with the Department during the investigation. The Director may consider when the cooperation began and whether you disclosed all pertinent information known to you;
  - (3) Whether you have fully investigated the circumstances of the noncompliance forming the basis for the PIE and, if so, have made the result of the investigation available to the Director;
  - (4) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the grounds for issuance of the PIE; and

- (5) Whether your organization has taken appropriate corrective actions or remedial measures, including implementing actions to prevent recurrence;
- (f) With respect to noncompliance with a DOT agency regulation, the degree to which the noncompliance affects matters common to the DOT drug and alcohol testing program;
- (g) Other factors appropriate to the circumstances of the case.

### § 40.391 What is the scope of a PIE?

- (a) The scope of a PIE is the Department's determination about the divisions, organizational elements, types of services, affiliates, and/or individuals (including direct employees of a service agent and its contractors) to which a PIE applies.
- (b) If, as a service agent, the Department issues a PIE concerning you, the PIE applies to all your divisions, organizational elements, and types of services that are involved with or affected by the noncompliance that forms the factual basis for issuing the PIE.
- (c) In the NOPE (see § 40.375(b)(4)), the initiating official sets forth his or her recommendation for the scope of the PIE. The proposed scope of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(3)).
- (d) In recommending and deciding the scope of the PIE, the initiating official and Director, respectively, must take into account the provisions of paragraphs (e) through (j) of this section.
- (e) The pervasiveness of the noncompliance within a service agent's organization (see § 40.389(d)) is an important consideration in determining the scope of a PIE. The appropriate scope of a PIE grows broader as the pervasiveness of the noncompliance increases.
- (f) The application of a PIE is not limited to the specific location or employer at which the conduct that forms the factual basis for issuing the PIE was discovered.
- (g) A PIE applies to your affiliates, if the affiliate is involved with or affected by the conduct that forms the factual basis for issuing the PIE.
- (h) A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with your organization in the following circumstances:
  - (1) Conduct forming any part of the factual basis of the PIE occurred in connection with the individual's performance of duties by or on behalf of your organization; or
  - (2) The individual knew of, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.
- (i) If a contractor to your organization is solely responsible for the conduct that forms the factual basis for a PIE, the PIE does not apply to the service agent itself unless the service agent knew or should have known about the conduct and did not take action to correct it.
- (j) PIEs do not apply to drug and alcohol testing that DOT does not regulate.
- (k) The following examples illustrate how the Department intends the provisions of this section to work:

*Example 1 to § 40.391.* Service Agent P provides a variety of drug testing services. P's SAP services are involved in a serious violation of this Part 40. However, P's other services fully comply with this part, and

P's overall management did not plan or concur in the noncompliance, which in fact was contrary to P's articulated standards. Because the noncompliance was isolated in one area of the organization's activities, and did not pervade the entire organization, the scope of the PIE could be limited to SAP services.

*Example 2 to § 40.391.* Service Agent Q provides a similar variety of services. The conduct forming the factual basis for a PIE concerns collections for a transit authority. As in Example 1, the noncompliance is not pervasive throughout Q's organization. The PIE would apply to collections at all locations served by Q, not just the particular transit authority or not just in the state in which the transit authority is located.

*Example 3 to § 40.391.* Service Agent R provides a similar array of services. One or more of the following problems exists: R's activities in several areas - collections, MROs, SAPs, protecting the confidentiality of information - are involved in serious noncompliance; DOT determines that R's management knew or should have known about serious noncompliance in one or more areas, but management did not take timely corrective action; or, in response to an inquiry from DOT personnel, R's management refuses to provide information about its operations. In each of these three cases, the scope of the PIE would include all aspects of R's services.

*Example 4 to § 40.391.* Service Agent W provides only one kind of service (e.g., laboratory or MRO services). The Department issues a PIE concerning these services. Because W only provides this one kind of service, the PIE necessarily applies to all its operations.

*Example 5 to § 40.391.* Service Agent X, by exercising reasonably prudent oversight of its collection contractor, should have known that the contractor was making numerous "fatal flaws" in tests. Alternatively, X received a correction notice pointing out these problems in its contractor's collections. In neither case did X take action to correct the problem. X, as well as the contractor, would be subject to a PIE with respect to collections.

*Example 6 to § 40.391.* Service Agent Y could not reasonably have known that one of its MROs was regularly failing to interview employees before verifying tests positive. When it received a correction notice, Y immediately dismissed the erring MRO. In this case, the MRO would be subject to a PIE but Y would not.

*Example 7 to § 40.391.* The Department issues a PIE with respect to Service Agent Z. Z provides services for DOT-regulated transportation employers, a Federal agency under the HHS-regulated Federal employee testing program, and various private businesses and public agencies that DOT does not regulate. The PIE applies only to the DOT-regulated transportation employers with respect to their DOT-mandated testing, not to the Federal agency or the other public agencies and private businesses. The PIE does not prevent the non-DOT regulated entities from continuing to use Z's services.

### § 40.393 How long does a PIE stay in effect?

- (a) In the NOPE (see § 40.375(b)(5)), the initiating official proposes the duration of the PIE. The duration of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(4)).
- (b) In deciding upon the duration of the PIE, the Director considers the seriousness of the conduct on which the PIE is based and the continued need to protect employers and employees from the service agent's noncompliance. The Director considers factors such as those listed in § 40.389 in making this decision.
- (c) The duration of a PIE will be between one and five years, unless the Director reduces its duration under § 40.407.

### § 40.395 Can you settle a PIE proceeding?

At any time before the Director's decision, you and the initiating official can, with the Director's concurrence, settle a PIE proceeding.

### § 40.397 When does the Director make a PIE decision?

The Director makes his or her decision within 60 days of the date when the record of a PIE proceeding is complete (including any meeting with the Director and any additional fact-finding that is necessary). The Director may extend this period for good cause for additional periods of up to 30 days.

### § 40.399 How does the Department notify service agents of its decision?

If you are a service agent involved in a PIE proceeding, the Director provides you written notice as soon as he or she makes a PIE decision. The notice includes the following elements:

- (a) If the decision is not to issue a PIE, a statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute.
- (b) If the decision is to issue a PIE -
  - (1) A reference to the NOPE;
  - (2) A statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute;
  - (3) A statement of the scope of the PIE; and
  - (4) A statement of the duration of the PIE.

### § 40.401 How does the Department notify employers and the public about a PIE?

- (a) The Department maintains a document called the "List of Excluded Drug and Alcohol Service Agents." This document may be found on the Department's web site (<http://www.transportation.gov/odapc>) . You may also request a copy of the document from ODAPC.
- (b) When the Director issues a PIE, he or she adds to the List the name and address of the service agent, and any other persons or organizations, to whom the PIE applies and information about the scope and duration of the PIE.
- (c) When a service agent ceases to be subject to a PIE, the Director removes this information from the List.

- (d) The Department also publishes a FEDERAL REGISTER notice to inform the public on any occasion on which a service agent is added to or taken off the List.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017]

### § 40.403 Must a service agent notify its clients when the Department issues a PIE?

- (a) As a service agent, if the Department issues a PIE concerning you, you must notify each of your DOT-regulated employer clients, in writing, about the issuance, scope, duration, and effect of the PIE. You may meet this requirement by sending a copy of the Director's PIE decision or by a separate notice. You must send this notice to each client within three business days of receiving from the Department the notice provided for in § 40.399(b).
- (b) As part of the notice you send under paragraph (a) of this section, you must offer to transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

### § 40.405 May the Federal courts review PIE decisions?

The Director's decision is a final administrative action of the Department. Like all final administrative actions of Federal agencies, the Director's decision is subject to judicial review under the Administrative Procedure Act (5 U.S.C. 551 *et. seq.*).

### § 40.407 May a service agent ask to have a PIE reduced or terminated?

- (a) Yes, as a service agent concerning whom the Department has issued a PIE, you may request that the Director terminate a PIE or reduce its duration and/or scope. This process is limited to the issues of duration and scope. It is not an appeal or reconsideration of the decision to issue the PIE.
- (b) Your request must be in writing and supported with documentation.
- (c) You must wait at least nine months from the date on which the Director issued the PIE to make this request.
- (d) The initiating official who was the proponent of the PIE may provide information and arguments concerning your request to the Director.
- (e) If the Director verifies that the sources of your noncompliance have been eliminated and that all drug or alcohol testing-related services you would provide to DOT-regulated employers will be consistent with the requirements of this part, the Director may issue a notice terminating or reducing the PIE.

### § 40.409 What does the issuance of a PIE mean to transportation employers?

- (a) As an employer, you are deemed to have notice of the issuance of a PIE when it appears on the List mentioned in § 40.401(a) or the notice of the PIE appears in the FEDERAL REGISTER as provided in § 40.401(d). You should check this List to ensure that any service agents you are using or planning to use are not subject to a PIE.

- (b) As an employer who is using a service agent concerning whom a PIE is issued, you must stop using the services of the service agent no later than 90 days after the Department has published the decision in the FEDERAL REGISTER or posted it on its web site. You may apply to the ODAPC Director for an extension of 30 days if you demonstrate that you cannot find a substitute service agent within 90 days.
- (c) Except during the period provided in paragraph (b) of this section, you must not, as an employer, use the services of a service agent that are covered by a PIE that the Director has issued under this subpart. If you do so, you are in violation of the Department's regulations and subject to applicable DOT agency sanctions (e.g., civil penalties, withholding of Federal financial assistance).
- (d) You also must not obtain drug or alcohol testing services through a contractor or affiliate of the service agent to whom the PIE applies.

*Example to paragraph (d):* Service Agent R was subject to a PIE with respect to SAP services. As an employer, not only must you not use R's own SAP services, but you also must not use SAP services you arrange through R, such as services provided by a subcontractor or affiliate of R or a person or organization that receives financial gain from its relationship with R.

- (e) This section's prohibition on using the services of a service agent concerning which the Director has issued a PIE applies to employers in all industries subject to DOT drug and alcohol testing regulations.

*Example to paragraph (e):* The initiating official for a PIE was the FAA drug and alcohol program manager, and the conduct forming the basis of the PIE pertained to the aviation industry. As a motor carrier, transit authority, pipeline, railroad, or maritime employer, you are also prohibited from using the services of the service agent involved in connection with the DOT drug and alcohol testing program.

- (f) The issuance of a PIE does not result in the cancellation of drug or alcohol tests conducted using the service agent involved before the issuance of the Director's decision or up to 90 days following its publication in the FEDERAL REGISTER or posting on the Department's web site, unless otherwise specified in the Director's PIE decision or the Director grants an extension as provided in paragraph (b) of this section.

*Example to paragraph (f):* The Department issues a PIE concerning Service Agent N on September 1. All tests conducted using N's services before September 1, and through November 30, are valid for all purposes under DOT drug and alcohol testing regulations, assuming they meet all other regulatory requirements.

#### **§ 40.411 What is the role of the DOT Inspector General's office?**

- (a) Any person may bring concerns about waste, fraud, or abuse on the part of a service agent to the attention of the DOT Office of Inspector General.
- (b) In appropriate cases, the Office of Inspector General may pursue criminal or civil remedies against a service agent.
- (c) The Office of Inspector General may provide factual information to other DOT officials for use in a PIE proceeding.



## § 40.413 How are notices sent to service agents?

- (a) If you are a service agent, DOT sends notices to you, including correction notices, notices of proposed exclusion, decision notices, and other notices, in any of the ways mentioned in paragraph (b) or (c) of this section.
- (b) DOT may send a notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, fax number, or e-mail address. DOT deems the notice to have been received by you if sent to any of these persons.
- (c) DOT considers notices to be received by you -
  - (1) When delivered, if DOT mails the notice to the last known street address, or five days after we send it if the letter is undeliverable;
  - (2) When sent, if DOT sends the notice by fax or five days after we send it if the fax is undeliverable; or
  - (3) When delivered, if DOT sends the notice by e-mail or five days after DOT sends it if the e-mail is undeliverable.

## Appendix A to Part 40 - DOT Standards for Urine Collection Kits

### The Collection Kit Contents

- 1. *Collection Container*
  - a. Single-use container, made of plastic, large enough to easily catch and hold at least 55 mL of urine voided from the body.
  - b. Must have graduated volume markings clearly noting levels of 45 mL and above.
  - c. Must have a temperature strip providing graduated temperature readings 32-38 °C/90-100 °F, that is affixed or can be affixed at a proper level on the outside of the collection container. Other methodologies (e.g., temperature device built into the wall of the container) are acceptable provided the temperature measurement is accurate and such that there is no potential for contamination of the specimen.
  - d. Must be individually wrapped in a sealed plastic bag or shrink wrapping; or must have a peelable, sealed lid or other easily visible tamper-evident system.
  - e. May be made available separately at collection sites to address shy bladder situations when several voids may be required to complete the testing process.
- 2. *Plastic Specimen Bottles*
  - a. Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.
  - b. Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles during shipment.
  - c. Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.

- d. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with the chance that the seal overlap would conceal printed information.
- e. Must be wrapped (with caps) together in a sealed plastic bag or shrink wrapping separate from the collection container; or must be wrapped (with cap) individually in sealed plastic bags or shrink wrapping; or must have peelable, sealed lid or other easily visible tamper-evident system.
- f. Plastic material must be leach resistant.

3. **Leak-Resistant Plastic Bag**

- a. Must have two sealable compartments or pouches which are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.
- b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

4. **Absorbent material**

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

5. **Shipping Container**

- a. Must be designed to adequately protect the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
- b. May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.
- c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the plastic leak-proof bags from the collection site to the laboratory.

## Appendix B to Part 40 - DOT Drug-Testing Semi-Annual Laboratory Report to Employers

The following items are required on each laboratory report:

Reporting Period: (inclusive dates)

Laboratory Identification: (name and address)

Employer Identification: (name; may include Billing Code or ID code)

C/TPA Identification: (where applicable; name and address)

1. Specimen Results Reported (total number)

By Test Reason

- (a) Pre-employment (number)
- (b) Post-Accident (number)

- (c) Random (number)
  - (d) Reasonable Suspicion/Cause (number)
  - (e) Return-to-Duty (number)
  - (f) Follow-up (number)
  - (g) Type of Test Not Noted on CCF (number)
2. Specimens Reported
- (a) Negative (number)
  - (b) Negative and Dilute (number)
3. Specimens Reported as Rejected for Testing (total number)
- By Reason
- (a) Fatal flaw (number)
  - (b) Uncorrected Flaw (number)
4. Specimens Reported as Positive (total number) By Drug
- (a) Marijuana Metabolite (number)
  - (b) Cocaine Metabolite (number)
  - (c) Opioids (number)
    - (1) Codeine (number)
    - (2) Morphine (number)
    - (3) 6-AM (number)
    - (4) Hydrocodone (number)
    - (5) Hydromorphone (number)
    - (6) Oxycodone (number)
    - (7) Oxymorphone (number)
  - (d) Phencyclidine (number)
  - (e) Amphetamines (number)
    - (1) Amphetamine (number)
    - (2) Methamphetamine (number)
    - (3) MDMA (number)
    - (4) MDA (number)
5. Adulterated (number)
6. Substituted (number)
7. Invalid Result (number)

[82 FR 52247, Nov. 13, 2017]

## Appendix C to Part 40 - DOT Drug-Testing Semi-Annual Laboratory Report to DOT

Mail, fax, or email to:

U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, W62-300, 1200 New Jersey Avenue SE., Washington, DC 20590, Fax: (202) 366-3897, Email: [ODAPCWebMail@dot.gov](mailto:ODAPCWebMail@dot.gov).

The following items are required on each report:

Reporting Period: (inclusive dates)

Laboratory Identification: (name and address)

1. DOT Specimen Results Reported (total number)

2. Negative Results Reported (total number)

Negative (number)

Negative-Dilute (number)

3. Rejected for Testing Results Reported (total number)

By Reason

(a) Fatal flaw (number)

(b) Uncorrected Flaw (number)

4. Positive Results Reported (total number)

By Drug

(a) Marijuana Metabolite (number)

(b) Cocaine Metabolite (number)

(c) Opioids (number)

(1) Codeine (number)

(2) Morphine (number)

(3) 6-AM (number)

(4) Hydrocodone (number)

(5) Hydromorphone (number)

(6) Oxycodone (number)

(7) Oxymorphone (number)

(d) Phencyclidine (number)

(e) Amphetamines (number)

- (1) Amphetamine (number)
- (2) Methamphetamine (number)
- (3) MDMA (number)
- (4) MDA (number)

5. Adulterated Results Reported (total number)

By Reason (number)

6. Substituted Results Reported (total number)

7. Invalid Results Reported (total number)

By Reason (number)

[82 FR 52247, Nov. 13, 2017]

## Appendix D to Part 40 - Report Format: Split Specimen Failure To Reconfirm

Mail, fax, or submit electronically to:

U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, W62-300, 1200 New Jersey Avenue SE., Washington, DC 20590, Fax: (202) 366-3897. Submit Electronically: <https://www.transportation.gov/content/split-specimen-cancellation-notification-49-cfr-part-40187-appendix-d>

The following items are required on each report:

1. MRO name, address, phone number, and fax number.
2. Collection site name, address, and phone number.
3. Date of collection.
4. Specimen I.D. number.
5. Laboratory accession number.
6. Primary specimen laboratory name, address, and phone number.
7. Date result reported or certified by primary laboratory.
8. Split specimen laboratory name, address, and phone number.
9. Date split specimen result reported or certified by split specimen laboratory.
10. Primary specimen results (e.g., name of drug, adulterant) in the primary specimen.
11. Reason for split specimen failure-to-reconfirm result (e.g., drug or adulterant not present, specimen invalid, split not collected, insufficient volume).
12. Actions taken by the MRO (e.g., notified employer of failure to reconfirm and requirement for recollection).
13. Additional information explaining the reason for cancellation.
14. Name of individual submitting the report (if not the MRO)

[82 FR 52247, Nov. 13, 2017]

## Appendix E to Part 40 - SAP Equivalency Requirements for Certification Organizations

1. **Experience:** Minimum requirements are for three years of full-time supervised experience or 6,000 hours of supervised experience as an alcoholism and/or drug abuse counselor. The supervision must be provided by a licensed or certified practitioner. Supervised experience is important if the individual is to be considered a professional in the field of alcohol and drug abuse evaluation and counseling.
2. **Education:** There exists a requirement of 270 contact hours of education and training in alcoholism and/or drug abuse or related training. These hours can take the form of formal education, in-service training, and professional development courses. Part of any professional counselor's development is participation in formal and non-formal education opportunities within the field.
3. **Continuing Education:** The certified counselor must receive at least 40-60 hours of continuing education units (CEU) during each two year period. These CEUs are important to the counselor's keeping abreast of changes and improvements in the field.
4. **Testing:** A passing score on a national test is a requirement. The test must accurately measure the application of the knowledge, skills, and abilities possessed by the counselor. The test establishes a national standard that must be met to practice.
5. **Testing Validity:** The certification examination must be reviewed by an independent authority for validity (examination reliability and relationship to the knowledge, skills, and abilities required by the counseling field). The reliability of the exam is paramount if counselor attributes are to be accurately measured. The examination passing score point must be placed at an appropriate minimal level score as gauged by statistically reliable methodology.
6. **Measurable Knowledge Base:** The certification process must be based upon measurable knowledge possessed by the applicant and verified through collateral data and testing. That level of knowledge must be of sufficient quantity to ensure a high quality of SAP evaluation and referral services.
7. **Measurable Skills Base:** The certification process must be based upon measurable skills possessed by the applicant and verified through collateral data and testing. That level of skills must be of sufficient quality to ensure a high quality of SAP evaluation and referral services.
8. **Quality Assurance Plan:** The certification agency must ensure that a means exists to determine that applicant records are verified as being true by the certification staff. This is an important check to ensure that true information is being accepted by the certifying agency.
9. **Code of Ethics:** Certified counselors must pledge to adhere to an ethical standard for practice. It must be understood that code violations could result in de-certification. These standards are vital in maintaining the integrity of practitioners. High ethical standards are required to ensure quality of client care and confidentiality of client information as well as to guard against inappropriate referral practices.
10. **Re-certification Program:** Certification is not just a one-time event. It is a continuing privilege with continuing requirements. Among these are continuing education, continuing state certification, and concomitant adherence to the code of ethics. Re-certification serves as a protector of client interests by removing poor performers from the certified practice.

11. **Fifty State Coverage:** Certification must be available to qualified counselors in all 50 states and, therefore, the test must be available to qualified applicants in all 50 states. Because many companies are multi-state operators, consistency in SAP evaluation quality and opportunities is paramount. The test need not be given in all 50 states but should be accessible to candidates from all states.
12. **National Commission for Certifying Agencies (NCCA) Accreditation:** Having NCCA accreditation is a means of demonstrating to the Department of Transportation that your certification has been reviewed by a panel of impartial experts that have determined that your examination(s) has met stringent and appropriate testing standards.

## Appendix F to Part 40 - Drug and Alcohol Testing Information that C/TPAs May Transmit to Employers

1. If you are a C/TPA, you may, acting as an intermediary, transmit the information in the following sections of this part to the DER for an employer, if the employer chooses to have you do so. These are the only items that you are permitted to transmit to the employer as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to employers, the transmission of SAP reports to employers, the transmission of positive alcohol test results, and the transmission of medical information from MROs to employers.
2. In every case, you must ensure that, in transmitting the information, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit MROs' drug testing results to DERs, you must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in § 40.167.

## Drug Testing Information

§ 40.25: Previous two years' test results

§ 40.35: Notice to collectors of contact information for DER

§ 40.61(a): Notification to DER that an employee is a "no show" for a drug test

§ 40.63(e): Notification to DER of a collection under direct observation

§ 40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen

§ 40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.)

§ 40.111(a): Transmission of laboratory statistical report to employer

§ 40.127(f): Report of test results to DER

§§ 40.127(g), 40.129(d), 40.159(a)(4)(ii); 40.161(b): Reports to DER that test is cancelled

§ 40.129 (d): Report of test results to DER

§ 40.129(g)(1): Report to DER of confirmed positive test in stand-down situation

§§ 40.149(b): Report to DER of changed test result

§ 40.155(a): Report to DER of dilute specimen

§ 40.167(b) and (c): Reports of test results to DER

§ 40.187(a)-(e) Reports to DER concerning the reconfirmation of tests

§ 40.191(d): Notice to DER concerning refusals to test

§ 40.193(b)(3): Notification to DER of refusal in shy bladder situation

§ 40.193(b)(4): Notification to DER of insufficient specimen

§ 40.193(b)(5): Transmission of CCF copies to DER (not to MRO)

§ 40.199: Report to DER of cancelled test and direction to DER for additional collection

§ 40.201: Report to DER of cancelled test

## Alcohol Testing Information

§ 40.215: Notice to BATs and STTs of contact information for DER

§ 40.241(b)(1): Notification to DER that an employee is a “no show” for an alcohol test

§ 40.247(a)(2): Transmission of alcohol screening test results only when the test result is less than 0.02

§ 40.255(a)(4): Transmission of alcohol confirmation test results only when the test result is less than 0.02

§ 40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath

*[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 35975, June 25, 2008]*

## Appendix G to Part 40 - Alcohol Testing Form

The following form is the alcohol testing form required for use in the DOT alcohol testing program beginning January 1, 2011. Employers are authorized to use the form effective February 25, 2010.



# U.S. Department of Transportation (DOT) Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results  
Here or Affix with  
Tamper Evident Tape

**Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN**

A: Employee Name \_\_\_\_\_  
(Print) (First, M.I., Last)

B: SSN or Employee ID No. \_\_\_\_\_

C: Employer Name \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

DER Name and Telephone No. \_\_\_\_\_  
DER Name \_\_\_\_\_ DER Phone Number \_\_\_\_\_

D: Reason for Test:  Random  Reasonable Susp  Post-Accident  Return to Duty  Follow-up  Pre-employment

**STEP 2: TO BE COMPLETED BY EMPLOYEE**

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date Month Day Year

Print Confirmation  
Results Here or Affix  
with Tamper Evident  
Tape

**STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN**

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN:  BAT  STT    DEVICE:  SALIVA  BREATH\*    15-Minute Wait:  Yes  No

SCREENING TEST: (For BREATH DEVICE\* write in the space below only if the testing device is not designed to print.)  
\_\_\_\_\_

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: Results MUST be affixed to each copy of this form or printed directly onto the form.

REMARKS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Alcohol Technician's Company \_\_\_\_\_    Company Street Address \_\_\_\_\_  
(PRINT) Alcohol Technician's Name (First, M.I., Last) \_\_\_\_\_    Company City, State, Zip \_\_\_\_\_    Phone Number \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature of Alcohol Technician    Date Month Day Year

Print Additional  
Results Here or Affix  
With Tamper Evident  
Tape

**STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER**

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature of Employee    Date Month Day Year

**COPY 1 – ORIGINAL – FORWARD TO THE EMPLOYER**

## U.S. Department of Transportation (DOT) Alcohol Testing Form

*(The instructions for completing this form are on the back of Copy 3)*

*Print Screening Results  
 Here or Affix with  
 Tamper Evident Tape*

**Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN**

A: Employee Name \_\_\_\_\_  
 (Print) (First, M.I., Last)

B: SSN or Employee ID No. \_\_\_\_\_

C: Employer Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

DER Name and Telephone No. \_\_\_\_\_  
 ( )  
 DER Name \_\_\_\_\_ DER Phone Number \_\_\_\_\_

D: Reason for Test:  Random  Reasonable Susp  Post-Accident  Return to Duty  Follow-up  Pre-employment

**STEP 2: TO BE COMPLETED BY EMPLOYEE**

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 Date Month Day Year

*Print Confirmation  
 Results Here or Affix  
 with Tamper Evident  
 Tape*

**STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN**

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN:  BAT  STT      DEVICE:  SALIVA  BREATH\*      15-Minute Wait:  Yes  No

SCREENING TEST: (For BREATH DEVICE\* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: Results MUST be affixed to each copy of this form or printed directly onto the form.

REMARKS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Alcohol Technician's Company \_\_\_\_\_ Company Street Address \_\_\_\_\_  
 (PRINT) Alcohol Technician's Name (First, M.I., Last) \_\_\_\_\_ Company City, State, Zip \_\_\_\_\_ Phone Number \_\_\_\_\_  
 \_\_\_\_\_  
 Signature of Alcohol Technician \_\_\_\_\_ Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 Date Month Day Year

*Print Additional  
 Results Here or Affix  
 With Tamper Evident  
 Tape*

**STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER**

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 Date Month Day Year

**COPY 2 – EMPLOYEE RETAINS**

# U.S. Department of Transportation (DOT) Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results  
Here or Affix with  
Tamper Evident Tape

### Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name \_\_\_\_\_  
(Print) (First, M.I., Last)

B: SSN or Employee ID No. \_\_\_\_\_

C: Employer Name \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

DER Name and Telephone No. \_\_\_\_\_ ( ) \_\_\_\_\_  
DER Name DER Phone Number

D: Reason for Test:  Random  Reasonable Susp  Post-Accident  Return to Duty  Follow-up  Pre-employment

### STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

Print Confirmation  
Results Here or Affix  
with Tamper Evident  
Tape

### STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN:  BAT  STT DEVICE:  SALIVA  BREATH\* 15-Minute Wait:  Yes  No

SCREENING TEST: (For BREATH DEVICE\* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: Results MUST be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company \_\_\_\_\_ Company Street Address \_\_\_\_\_ ( ) \_\_\_\_\_  
(PRINT) Alcohol Technician's Name (First, M.I., Last) \_\_\_\_\_ Company City, State, Zip \_\_\_\_\_ Phone Number \_\_\_\_\_

Signature of Alcohol Technician \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

Print Additional  
Results Here or Affix  
With Tamper Evident  
Tape

### STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

COPY 3 - ALCOHOL TECHNICIAN RETAINS

## **PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 8 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

**BACK OF PAGES 1 and 2**

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INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION ALCOHOL TESTING FORM

**NOTE:** Use a ballpoint pen, press hard, and check all copies for legibility.

**STEP 1** The Breath Alcohol Technician (BAT) or Screening Test Technician (STT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

**NOTE:** If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

**STEP 2** Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

**NOTE:** If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

**STEP 3** The BAT or STT completes the information required in this step and checks the type of device (saliva or breath) being used. After conducting the alcohol screening test, do the following (as appropriate):

Enter the information for the screening test (test number, testing device name, testing device serial number or lot number and expiration date, time of test with any device-dependent activation times, and the results), on the front of the ATF. For a breath testing device capable of printing, the information may be part of the printed record.

**NOTE:** Be sure to enter the result of the test exactly as it is indicated on the breath testing device, e.g., 0.00, 0.02, 0.04, etc.

Affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original printed information, or the device may print the results directly on the ATF. If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. The test process is complete.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

Ensure that a waiting period of at least 15 minutes occurs before the confirmation test begins. Check the box indicating that the waiting period lasted at least 15 minutes.

After conducting the alcohol confirmation test, affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original information, or the device may print the results directly on the ATF. Print, sign your name, and enter the date in the space provided. Go to STEP 4.

**STEP 4** If the employee has a breath alcohol confirmation test result of 0.02 or higher, instruct the employee to read, sign, and date the employee certification statement in STEP 4.

**NOTE:** If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks line in STEP 3.

Immediately notify the DER if the employee has a breath alcohol confirmation test result of 0.02 or higher.

*[75 FR 8529, Feb. 25, 2010, as amended at 75 FR 13009, Mar. 18, 2010; 75 FR 38423, July 2, 2010]*

## **Appendix H to Part 40 - DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form**

The following form is the MIS Data Collection form required for use to report calendar year MIS data. The instructions for this form are found at <https://www.transportation.gov/odapc>.

U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: \_\_\_\_\_

OMB No. 2105-0529

Form DOT F 1385 (Rev. 4/2019)

**I. Employer:**

Company Name: \_\_\_\_\_

Doing Business As (DBA) Name (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_ Signature: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Date Certified: \_\_\_\_\_

Prepared by (if different): \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

C/TPA Name and Telephone (if applicable): \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_

**Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:**

\_\_\_ FMCSA – Motor Carrier: DOT #: \_\_\_\_\_ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

\_\_\_ FAA – Aviation: Certificate # (if applicable): \_\_\_\_\_ Plan / Registration # (if applicable): \_\_\_\_\_

\_\_\_ FHMSA – Pipeline: (Check) Gas Gathering \_\_\_ Gas Transmission \_\_\_ Gas Distribution \_\_\_ Transport Hazardous Liquids \_\_\_ Transport Carbon Dioxide

\_\_\_ FRA – Railroad: Total Number of observed/documentated Part 219 “Rule G” Observations for covered employees: \_\_\_\_\_

\_\_\_ USCG – Maritime: Vessel ID # (USCG- or State-Issued): \_\_\_\_\_ (If more than one vessel, list separately.)

\_\_\_ FTA – Transit

**II. Covered Employees (A) Enter Total Number Safety-Sensitive Employees In All Employee Categories:**

--

**(B) Enter Total Number of Employee Categories:**

--

**(C)**

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

**III. Drug Testing Data:**

Type of Test	1 Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12]	2 Verified Negative Results	3 Verified Positive Results ~ For One Or More Drugs	4 Positive For Marijuana	5 Positive For Cocaine	6 Positive For PCP	7 Positive For Opioids	8 Positive For Amphetamines	Refusal Results				13 Cancelled Results	
									9 Adulterated	10 Substituted	11 “Sly Bladder” ~ With No Medical Explanation	12 Other Refusals To Submit To Testing		
Pre-Employment														
Random														
Post-Accident														
Reasonable Susp./Cause														
Return-to-Duty														
Follow-Up														
TOTAL														

**IV. Alcohol Testing Data:**

Type of Test	1 Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8]	2 Screening Tests With Results Below 0.02	3 Screening Tests With Results 0.02 Or Greater	4 Number Of Confirmation Tests Results	5 Confirmation Tests With Results 0.02 Through 0.039	6 Confirmation Tests With Results 0.04 Or Greater	Refusal Results		
							7 “Sly Lung” ~ With No Medical Explanation	8 Other Refusals To Submit To Testing	9 Cancelled Results
Pre-Employment									
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

**PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 90 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

[84 FR 16773, Apr. 23, 2019]



PERSONAL SERVICES CONTRACT SUMMARY

DATE: August 23, 2011

DEPARTMENT NAME: San Francisco Municipal Transportation Agency

DEPARTMENT NUMBER 68

TYPE OF APPROVAL: ( ) EXPEDITED ( ) REGULAR (OMIT POSTING)

( ) CONTINUING ( ) ANNUAL

TYPE OF REQUEST: ( ) INITIAL REQUEST (X) MODIFICATION (PSC# 4023-08/09)

TYPE OF SERVICE: Offsite and onsite urine and breath sample collection

FUNDING SOURCE: San Francisco Municipal Transportation Agency 2011-2013 Operating Budget

PSC AMOUNT: \$ 900,000.00

PSC MODIFICATION: \$ 210,000.00

PSC TOTAL: \$1,110,000.00

PSC DURATION: December 1, 2008 - November 30, 2011

PSC MODIFICATION: November 30, 2011 - November 30, 2013

PSC DURATION: December 1, 2008 - November 30, 2013

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

To provide an off-site facility to collect pre-employment, post-accident, return-to-duty, reasonable suspicion breath and urine samples during normal working hours and/or after hours for San Francisco Municipal Transportation Agency (SFMTA) employees and contractors and to provide a mobile on-site facility to collect random, reasonable suspicion and post-accident breath and urine collection in compliance with DOT/FTA Drug and Alcohol Testing Regulations.

B. Explain why this service is necessary and the consequences of denial:

Urine and breath collection is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) Rules. Denial of this service will jeopardize continued transit agency Federal funding assistance.

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

This service was provided through PSC No. 4023-08/09 that was approved on September 15, 2008.

D. Will the contract(s) be renewed:

Yes.

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

SEIU, Local 2010 [Signature] 8/25/11
Union Name Signature of person mailing / faxing form Date
IEPTE, Local 21 [Signature] 8/25/11
Union Name Signature of person mailing / faxing form Date

RFP sent to [Union Name] on [Date] [Signature]

\*\*\*\*\*
FOR DEPARTMENT OF HUMAN RESOURCES USE
PSC# 4023-08/09 SFMTA approved
8-23-11

STAFF ANALYSIS/RECOMMENDATION:

CIVIL SERVICE COMMISSION ACTION:

**3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE**

**A. Specify required skills and/or expertise:**

The collection personnel must be trained in procedures designed to comply with 49 CFR Part 40, Subparts C and J, and shall demonstrate proficiency in complying with these procedures. Collection procedures for urine samples should be designed to comply with 49 CFR Subparts C, D and E. The collection of breath samples must be designed to comply with 49 CFR Part 40, Subparts J, K, L, M and N.

**B. Which, if any, civil service class normally performs this work?**

No civil service class normally performs this work.

**C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:**

The contractual services will include all necessary facilities and/or equipment for the collection of specimens and collection sites must comply with all requirements specified in 40 CFR Part 40, Subparts D and K. The firm selected must have the compliant off-site facilities and personnel dedicated solely to SFMTA's drug and alcohol testing program to provide a clean, secure and private environment.

**4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM**

**A. Explain why civil service classes are not applicable:**

Civil service classes are not applicable because the knowledge and experience required for this type of work requires knowledge, experience and training related to the collection of urine and breath samples as specified by 49CFR Part 40, Subpart C, D, E, J, K, L, M, and N.

**B. Would it be practical to adopt a new civil service class to perform this work? Explain.**

No. There are no CSC classes that can meet the legal mandates of 49 CFR Part 40 that require specific standards and adherence to specific procedures. Contracting is the most effective way to provide this service.

**5. ADDITIONAL INFORMATION (if "yes", attach explanation)**

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	( )	(X)
B. Will the contractor train City and County employees?	( )	(X)
C. Are there legal mandates requiring the use of contractual services?	( )	(X)
D. Are there federal or state grant requirements regarding the use of contractual services? -Yes. The DOT/FTA regulations 49 CFR Part 40.	(X)	( )
E. Has a board or commission determined that contracting is the most effective way to provide this service? - SFMTA Board approved at its meeting on August 5, 2008. Resolution No. 08-136	(X)	( )
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department? - SFMTA elects to exercise an option to extend the contracts with Accurate C&S Services and City Services.	(X)	( )

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

*Parveen Boparai*

\_\_\_\_\_  
Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai  
Print or Type Name

(415) 701-5377  
Telephone Number

San Francisco Municipal Transportation Agency, Human Resources  
1 South Van Ness Avenue, 7<sup>th</sup> Floor, San Francisco, California 94103  
Address



# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE  
MAYOR

4032-11/12 \$450K  
4033-11/12 \$1.77M  
4033-08/09 mod \$210K  
1.11M

September 28, 2011

## NOTICE OF CIVIL SERVICE COMMISSION ACTION

**SUBJECT: REVIEW OF REQUEST FOR APPROVAL OF PROPOSED PERSONAL SERVICES CONTRACT NUMBERS 4024-11/12 THROUGH 4038-11/12; 3076-09/10; 4040-10/11; AND 4023-08/09.**

At its meeting of September 23, 2011 the Civil Service Commission had for its consideration the above matter.

**PLEASE NOTE:** *It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval. Please share it with everyone responsible for follow-up.*

It was the decision of the Commission to:

- (1) Adopt the report; Approve request for PSC #4034-11/12 as amended. Notify the Office of the Controller and the Office of Contract Administration.
- (2) Adopt the report; Approve request for all remaining proposed personal service contracts. Notify the Office of the Controller and the Office of Contract Administration.

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.6.

CIVIL SERVICE COMMISSION

ANITA SANCHEZ  
Executive Officer

### Attachment

- c: Cynthia Avakian, Airport Commission
- Parveen Boparai, Municipal Transportation Agency
- Rachel Buerkle, Department of the Environment
- Micki Callahan, Human Resources Director
- Gordon Choy, Department of Public Works
- Marie de Vera, Department of Human Resources
- Kendall Gary, Department of Technology
- Kan Htun, Arts Commission
- Shamica Jackson, Public Utilities Commission
- Florence Kyaun, Public Utilities Commission
- Diane Lim, Adult Probation Department
- Joan Lubamersky, General Services Agency
- Esther Reyes, Controller's Office
- Maria Ryan, Department of Human Resources
- Officer Shawn Wallace, San Francisco Police Department
- Commission File
- Chron

POSTING FC  
9/19/2011

PROPOSED PERSONAL SERVICES CONTRACTS - Regular

PSC No	Dept No.	Dept Name	Approval Type	Contract Amount	Description of Work	Duration
4029-11/12	09	Controller	Regular	\$1,500,000	Provide municipal financing advisory services to Office of Public Finance and other Controller's Office and City department staff in the following areas: general obligation bonds, certificates of participation, lease revenue bonds, Mello-Roos special tax bonds, tax allocation bonds, revenue bonds, tax-exempt commercial paper, and other forms of municipal financing.	10/14/2011 - 10/14/2016
4030-11/12	22	Environment	Regular	\$75,000	The contractor will provide the pick-up and disposal of residentially generated, discarded pharmaceuticals collected at designated pharmacies and police stations in San Francisco. Pick-ups must be available on both a regularly scheduled and on-call basis, depending on the collection site's individual needs. The contractor will also provide supplies and equipment as necessary for accomplishing this task.	8/1/2011 - 7/1/2013
4031-11/12	70	General Services Agency	Regular	\$2,000,000	The contractor provides consulting services for the modification and customization of Customer Relationship Management (CRM) software used to manage the City's service requests. When required, vendor services assist City staff extend functionality of the application, while training staff to make additional improvements.	11/1/2011 - 10/31/2016
4032-11/12	35	Municipal Transportation Agency	Regular	\$450,000	Research and report on international best taxi industry practices and regulatory performance measures, recommend reforms of taxi regulations, develop a methodology for assessing the adequacy of taxi supply and demand and apply the methodology to evaluate the correct number of taxis in San Francisco, and develop a cost index to assess the appropriate level of taxi fares and gate fees and apply the index to determine whether San Francisco taxi fares and gate fees should be adjusted.	11/1/2011 - 10/31/2013
4033-11/12	35	Municipal Transportation Agency	Regular	\$1,770,000	Provide separate professional parking garage operational services for 13 parking facilities organized into three groups as follows: Group A - 6 Facilities (Civic Center, Lombard, Mission Bardielt, Performing Arts, and 16th & Hoff garages, and 7th & Harrison lot); Group B - 2 Facilities (Golden gateway and St. Mary's Square garages); Group C - 5 Facilities (SF General Hospital, Moscone Center, North Beach, Vallejo St., and Polk Bush garages). Services include: providing qualified and experienced parking personnel for cashiering, janitorial and security. The Operator shall provide oversight of all aspects of administrative functions including, but not limited to, collection, reconciliation and deposit of all parking and non-parking revenue; repair and maintenance of facilities, and revenue control equipment; compliance with insurance and bond requirement; providing valet or valet-assist parking services during special events. The term is six (6) years, thereafter on a month-to-month basis, not to exceed 36 months. The amount of \$1,770,000 represents the compensation paid to the parking firms for providing professional operational services at the 13 garages. The \$1,770,000 amount breaks down to approximately \$590,000 (\$72,000 per year, with a 5% increase starting in year four) for each of the three groups. Operating expenses, including parking taxes, are funded through gross parking revenue collected, but is not part of the compensation paid to the parking firm.	11/1/2011 - 10/30/2017

PROPOSED PERSONAL SERVICES CONTRACTS  
MODIFICATION TO INCREASE CONTRACT AMOUNT/DURATION

PSC No	Dept No	Dept Description	Approval Type	Modified Amount	Cumulative Total	Description of Work	Start Date	End Date
3076-09/10	09	Controller	Regular	\$103,000	\$143,000	The City and County of San Francisco issued an RFP and selected a Contractor to enable the City to print and deliver checks during standard business operations and during an emergency at either a City facility (non-hosted) or at third party Contractor-run facility or service (hosted) consistently, securely and accurately. In addition, the selected Contractor will print and deliver checks in the event of hardware failure, software failure, or power failure during standard business operations and also have the ability to produce and deliver checks in the event of a large scale disaster for the San Francisco Bay Area securely and accurately. A modification of the approved PSC summary is sought to maximize the term of the contract beyond two years.	5/24/2010	7/30/2021
4040-10/11	28	Art Commission	Regular	\$8,000,000	\$9,899,510	In accordance with the City Charter, the San Francisco Symphony will perform concerts. These concerts will take place at the San Francisco Davies Symphony Hall October 2010 - July 2011 with two free concerts at a public park. Concerts will continue at San Francisco Davies Symphony Hall From July 2011 - June 30, 2014, with one free concert at the park each year.	9/30/2010	6/30/2014
4023-08/09	35	Municipal Transportation Agency	Regular	\$210,000	\$1,110,000	To provide an off-site facility to collect pre-employment, post-accident, return-to-duty, reasonable suspicion breath and urine samples during normal working hours and/or after hours for San Francisco Municipal Transportation Agency (SFMTA) employees and contractors and to provide a mobile on-site facility to collect random, reasonable suspicion and post-accident breath and urine collection in compliance with DOT/FTA Drug and Alcohol Testing Regulations.	12/1/2008	11/30/2013

Sum of Modified Amounts: \$8,313,000

9/19/2011

PROPOSED PERSONAL SERVICES CONTRACTS - Regular

PSC No	Dept No.	Dept Name	Approval Type	Contract Amount	Description of Work	Duration
4034-11/12	38	Police	Regular	\$7,000,000	The proposed work is to develop a new data warehouse which will allow other agencies such as the Courts, Sheriff, District Attorney, Adult Probation and Public Defender to access our data as needed using our City wide hub call JUSTIS. We will also be connecting to the broader Bay area, US and international data sources to improve our identification of crimes and crime activity in other regions. Predictive Oracle tools such as Oracle Business Intelligence Enterprise Engine will be used to help identify crime patterns and trends to assist in more efficient policing. The project will also be capable of providing access to data in Police vehicles, on hand held devices or laptops in order to provide more efficient public protection.	10/1/2011 - 9/30/2017
4035-11/12	40	Public Utilities Commission	Regular	\$960,000	The work consists of a one year contract to optimize, operate, and maintain Fats, Oils, and Grease (FOG) Biodesign equipment currently owned by the SFPUC and located at the SFPUC's Oceanside Water Pollution Control Plant. This equipment involves a proprietary process, patented by BlackGold Biofuels. As such, only BlackGold Biofuels can perform this work on the equipment. If the optimization work is successful, BlackGold Biofuels will train City personnel on operation and maintenance of its equipment.	9/1/2011 - 9/1/2012
4036-11/12	90	Public Works	Regular	\$1,648,520	Perform environmental studies and reports for the effects of building new vehicle and transit access between Hunters Point Shipyard and northbound and southbound US 101 and I-280. The original PSC #4017-03/04 was approved on 8/18/2003 for \$2,200,000. The consultant has been under contract and has completed the studies, which were submitted to Caltrans over 3 years ago. Recently Caltrans asked the City to modify the alternatives and prepare a different type of environmental document.	8/30/2011 - 8/30/2014
4037-11/12	90	Public Works	Regular	\$800,000	Organize community support; prepare educational or outreach materials; assist in developing and conducting outreach and education efforts; conduct neighborhood cleaning projects; organize community interest in establishment of Business Neighborhood Improvement Districts (BID/NID); survey public opinion or conduct focus groups; provide specialized or untried equipment for evaluation; provide cleaning personnel for special events; conduct special cleaning services; graffiti abatement; or maintenance of plant materials services above or outside of the Bureau's routine operating responsibilities; and conducting pilot cleaning programs that affect both public and private properties. Bureau may award multiple contracts.	9/15/2011 - 12/15/2014
4038-11/12	75	Dept. of Technology	Regular	\$1,433,069	Phase I of this project will create a new digital video infrastructure that will operate in tandem with the old analog system until Phase II of the project is completed. Phase I includes equipment installation, integration and commissioning of two new control rooms located at SFGovTV's production facility in room 92 of City Hall. The new control rooms will be equipped with new digital audio and video equipment. Phase I also includes the installation of a new digital video routing switcher, a new Master Control center, video server, automation and the relocation of equipment currently located in room 92 to room 93. The source signals from the City Hall hearing rooms will not be replaced until Phase II, so the system installed during Phase I includes several analog/digital converters to bridge the old and new equipment.	9/19/2011 - 9/30/2012

Total Amount - Regular: \$22,986,589

POSTING FOR  
9/19/2011

PROPOSED PERSONAL SERVICES CONTRACTS - Regular

PSC No	Dept No.	Dept Name	Approval Type	Contract Amount	Description of Work	Duration
4024-11/12	13	Adult Probation	Regular	\$300,000	Contractor will provide 1) a comprehensive review and audit of the Department's policies and procedures, and update and improve policies and procedures to ensure that they are in compliance with local, state and federal law and which incorporate best practices in adult probation; 2) facilitation and support of the Community Corrections Partnership Collaboration; 3) an evaluation of Department case files on probationers sent to state prison in 2010; 4) creation of a training plan for the Department; 5) grant writing and research; 6) demographic analysis.	7/1/2011 - 7/30/2013
4025-11/12	27	Airport Commission	Regular	\$500,000	The SMPOE Data Center project includes the development (both design and construction) of a new "Greenfield-built" Data Center Facility; that will include data processing equipment room, mechanical systems room, battery storage room, office, restroom and utility room. SFO requires construction management support with design-build experience in Data Centers design and construction experience to manage the programming, design and construction of this project. This project also includes the coordination of the construction of new fiber cable communications connections to be brought within the building envelope (by others) and all additional utilities/services necessary to service the building in its functional intent. The CM consultant team will be responsible for providing the specialized expertise to manage this scope of work.	9/19/2011 - 6/30/2016
4026-11/12	27	Airport Commission	Regular	\$1,750,000	The Contractor shall provide routine maintenance, scheduled maintenance/preventive maintenance, non-scheduled maintenance, ordinary wear and other maintenance and repair services, 24-hour on call response seven (7) days a week 365 days a year, equipment maintenance and repair activity documentation as well as reporting on the Airport-owned Passenger Boarding Bridges (PBB) and Baggage Handling Systems (BHS). The PBBs and BHSs were maintained by the airlines under their lease and use agreements in the past.	10/1/2011 - 9/30/2016
4027-11/12	27	Airport Commission	Regular	\$2,000,000	San Francisco International Airport plans to upgrade its industrial waste water treatment plant. The design-build team, with knowledge and experience in IWWT processing, sanitary sewer and reclaimed water system processes to provide programming, schematic design and management, will assist on this project. The IWWT project includes the design and construction of a new industrial waste water treatment process facility, offices and laboratory, demolition of the existing IWWT process building and shop building, construction of additional equalization tanks with power and controls, a new trickling filter tank, renovation of existing clarifiers and the existing sludge transfer pump station, construction of a new microbiology laboratory, evaluation and replacement of inter-building process piping, construction of a new chlorine contact basin, incorporation of a new emergency power generator, upgrading of the existing Wonderware software program for process control, remodeling of the existing sanitary sewer administration and operations building, developing a plan to utilize the methane gas generated from digesters, replacement of motor control centers and the design and construction of a new Headworks box and screen facility, and developing a plan for Airport-wide reclaimed water processing system. The PM team will be responsible for providing the specialized experts to prepare bridging documents and manage this scope of work.	9/19/2011 - 6/30/2016
4028-11/12	28	Art Commission	Regular	\$800,000	Artist team selected as part of a design competition to contract for final design and fabrication of a veteran's memorial for Memorial Court, which is part of the War Memorial Complex, located between the War Memorial Opera House and the Veterans Building.	7/1/2011 - 6/30/2014

PERSONAL SERVICES CONTRACT SUMMARY

DATE: September 16, 2008

DEPARTMENT NAME: San Francisco Municipal Transportation Agency

DEPARTMENT NUMBER: #35

TYPE OF APPROVAL: (X) EXPEDITED ( ) REGULAR (OMIT POSTING\_\_\_\_)  
( ) CONTINUING ( ) ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST ( ) MODIFICATION (PSC# \_\_\_\_\_)

TYPE OF SERVICE: On-site Urine and breath sample collection

FUNDING SOURCE: SFMTA Operating Budget

PSC AMOUNT: \$40,000.00

PSC DURATION: October 1, 2008 through December 31, 2008

1. DESCRIPTION OF WORK

A. **Concise description of proposed work:**

To provide a mobile facility to collect random, pre-employment, post-accident, return-to-duty, and after hours breath and urine samples for SFMTA employees and contractors in compliance with DOT/FTA Drug and Alcohol Testing Regulations.

B. **Explain why this service is necessary and the consequences of denial:**

This is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) Rules. Denial of this service will jeopardize continued transit agency Federal funding assistance.

C. **Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):**

Howger Services has provided this service through Personal Services Contract 4092-04/05 approved on 5/19/05

D. **Will the contract(s) be renewed:**

Yes.

2. **UNION NOTIFICATION:** Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

N/A  
Union Name Signature of person mailing / faxing form Date

Union Name Signature of person mailing / faxing form Date

RFP sent to \_\_\_\_\_, on \_\_\_\_\_  
Union Name Date Signature

\*\*\*\*\*

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 3034-08/09

SFMTA Approved

STAFF ANALYSIS/RECOMMENDATION:  
CIVIL SERVICE COMMISSION ACTION:

9-16-08  
PB



3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

A. **Specify required skills and/or expertise:**

The collection personnel must be trained in procedures designed to comply with 49 CFR Part 40, Subparts C and J, and shall demonstrate proficiency in complying with these procedures. Collection procedures for urine samples should be designed to comply with 49 CFR Subparts C, D, and E, including but not limited to: a) security of samples and site; b) specimen control; c) completion of Specimen Custody Forms; d) completion of SFMTA Consent to Test and Use Of Disclosure of Medical Information Forms; e) SFMTA employee identification procedures; f) privacy; g) inspection of sample to ensure integrity and identify specimen; h) specimen examination and documentation of temperature measurement; i) conditions indicating need for observed specimen; j) observed procedure to follow in case of failure of employee to cooperate or to provide sufficient sample volume (45 ml); k) submission of "expedited" specimen to laboratory; and l) routine specimen transport. The collection of breath samples must be designed to comply with 49 CFR Part 40, Subparts J, K, L, M and N including but not limited to: a) Breath alcohol collection shall be administered by a certified Breath Alcohol Technician (BAT) or Screening Test Technician (STT); b) BAT shall only use a Evidential Breath Testing Device (EBT) and STT shall only use an Alcohol Screening Device (ASD) that is approved by the National Highway Traffic Safety Administration (NHSTA); c) All EBT's used must be externally calibrated in accordance with the plan developed by the manufacturer of the device for quality assurance; d) BAT and STT shall only use U.S. DOT Breath Alcohol Testing Forms; e) MUNI consent to test forms must be completed; f) BAT and STT shall follow all rules in 49 CFR Part 40, subparts L, M, and N for operation of the EBT or ASD; g) if initial test is 0.02 or greater, BAT or STT shall perform a confirmation test at least 15 minutes, and no later than 30 minutes of the completion of the screening test.

B. **Which, if any, civil service class normally performs this work?** None.

C. **Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:**

The contractual services will include all necessary facilities and/or equipment for the collection of specimens and collection sites must comply with all requirements specified in 40 CFR Part 40, Subparts D and K. The firm selected must have the appropriate mobile recreational vehicle (or equivalent) and personnel dedicated solely to SFMTA's drug and alcohol testing program to provide a clean, secure and private environment.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

A. **Explain why civil service classes are not applicable:**

Civil service classes are not applicable because the knowledge and experience required for this type of work requires knowledge, experience and training related to the collection of urine and breath samples as specified by 49CFR Part 40, Subpart C, D, E, J, K, L, M, and N.

B. **Would it be practical to adopt a new civil service class to perform this work? Explain.**

No. Adopting a new civil service class may result in a recruitment and retention problem and consequently affect the required services under DOT/FTA rules. There are legal mandates (49 CFR Part 40) requiring contractor to meet specific standards and adhere to specific procedures. Contracting is the most effective way to provide this service.

5. ADDITIONAL INFORMATION (if "yes", attach explanation)

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	( )	(X)
B. Will the contractor train City and County employees?	( )	(X)
C. Are there legal mandates requiring the use of contractual services?	( )	(X)
D. Are there federal or state grant requirements regarding the use of contractual services?	( )	(X)
E. Has a board or commission determined that contracting is the most effective way to provide this service?	( )	(X)
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department?	(X)	( )

**Howger Services**  
THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

*Parveen Boparai*

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai  
Print or Type Name

(415) 554-4160  
Telephone Number

San Francisco Municipal Transportation Agency

401 Van Ness Ave. Rm. 320. S. F. CA 94102



NOTICE OF ACTION

September 25, 2008

Parveen Boparai  
Municipal Transportation Agency  
401 Van Ness Avenue, Room 320  
San Francisco, CA 94102

Dear Ms. Boparai:

This is to notify you of the approval of the following Personal Services Contract(s) by the Department of Human Resources in accordance with, and under the authority of, the Civil Service Commission procedures for processing Personal Services Contracts:

<u>PSC Number</u>	<u>Amount</u>	<u>Description of work</u>
3034-08/09	\$40,000	Will provide a mobile facility to collect random, pre-employment, post-accident, return-to-duty, and after hours breath and urine samples for SFMTA employees and contractors in compliance with DOT/FTA Drug and Alcohol Testing Regulations.

by: Emily Morrison for  
Micki Callahan  
Human Resources Director

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Medical Review Officer (MRO) Services

Funding Source: General Funds

PSC Duration: 5 years 1 day

PSC Amount: \$120,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The consultant will provide the services of a Medical Review Officer (MRO) for the San Francisco Municipal Transportation Agency (SFMTA). This is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA), Title 49: Transportation, Code of Federal Regulations, Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40 ).

B. Explain why this service is necessary and the consequence of denial:

Denial of this service will place the SFMTA Substance Abuse Program out of compliance with the mandatory Federal regulations and jeopardize the SFMTA's Federal funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services were previously provided via PSC#3094-07/08

D. Will the contract(s) be renewed?

The current contract is expiring and the SFMTA will be pursuing a Request for a Proposal.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Due to the ongoing FTA/DOT compliance requirement of services, a 5-year duration will provide the stability of services to the Agency.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

B. Explain the qualifying circumstances:

Civil Service classes exist and are not applicable because they must be a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with Federal DOT/FTA Substance Abuse regulations and have access to appropriate facilities and the necessary equipment to perform the DOT/FTA – required for MRO functions. Services are best provided by an independent outside consultant.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: The consultant must be a licensed physician who is a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with Federal DOT/FTA Substance Abuse regulations and have access to appropriate facilities and the necessary equipment to perform the DOT/FTA – required for MRO functions
- B. Which, if any, civil service class(es) normally perform(s) this work? 2230, Physician Specialist;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA – required MRO function.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Civil Service class 1167, Physician Administrator or 2230 Physician Specialist may perform this work. However, these classifications generally do not possess the specialized knowledge and experience of substance abuse disorders and or the appropriate training certifications that are required by the Federal DOT/FTA regulations and have access to appropriate facilities and the necessary equipment to perform the DOT/FTA – required for MRO functions.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Civil Service classes are not applicable because they must be a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with Federal DOT/FTA Substance Abuse regulations and have access to appropriate facilities and the necessary equipment to perform the DOT/FTA – required for MRO functions.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Classifications already exist. Civil Service classes are not applicable because they must be a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with Federal DOT/FTA Substance Abuse regulations and have access to appropriate facilities and the necessary equipment to perform the DOT/FTA – required for MRO functions.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. Training is not applicable.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
Yes. MTA Resolution 99-116

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 01/06/2023, the Department notified the following employee organizations of this PSC/RFP request:  
SEIU 1021 Miscellaneous; SEIU Local 1021; UAPD; SEIU, Local 1021 (Staff Nurse & Per Diem Nurse)

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, 6th Floor San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47645 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**



please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended



# **Additional Attachment(s)**

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This content is from the eCFR and is authoritative but unofficial.

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## Title 49 - Transportation

### Subtitle A - Office of the Secretary of Transportation

#### Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs

##### Subpart A Administrative Provisions

- § 40.1 Who does this regulation cover?
- § 40.3 What do the terms used in this part mean?
- § 40.5 Who issues authoritative interpretations of this regulation?
- § 40.7 How can you get an exemption from a requirement in this regulation?

##### Subpart B Employer Responsibilities

- § 40.11 What are the general responsibilities of employers under this regulation?
- § 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?
- § 40.14 What collection information must employers provide to collectors?
- § 40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?
- § 40.17 Is an employer responsible for obtaining information from its service agents?
- § 40.19 *[Reserved]*
- § 40.21 May an employer stand down an employee before the MRO has completed the verification process?
- § 40.23 What actions do employers take after receiving verified test results?
- § 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?
- § 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?
- § 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?
- § 40.29 Where is other information on employer responsibilities found in this regulation?

##### Subpart C Urine Collection Personnel

- § 40.31 Who may collect urine specimens for DOT drug testing?
- § 40.33 What training requirements must a collector meet?
- § 40.35 What information about the DER must employers provide to collectors?
- § 40.37 Where is other information on the role of collectors found in this regulation?

##### Subpart D Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

- § 40.41 Where does a urine collection for a DOT drug test take place?
- § 40.43 What steps must operators of collection sites take to protect the security and integrity

of urine collections?

§ 40.45 What form is used to document a DOT urine collection?

§ 40.47 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?

§ 40.49 What materials are used to collect urine specimens?

§ 40.51 What materials are used to send urine specimens to the laboratory?

#### Subpart E Urine Specimen Collections

§ 40.61 What are the preliminary steps in the collection process?

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

§ 40.65 What does the collector check for when the employee presents a specimen?

§ 40.67 When and how is a directly observed collection conducted?

§ 40.69 How is a monitored collection conducted?

§ 40.71 How does the collector prepare the specimens?

§ 40.73 How is the collection process completed?

#### Subpart F Drug Testing Laboratories

§ 40.81 What laboratories may be used for DOT drug testing?

§ 40.83 How do laboratories process incoming specimens?

§ 40.85 What drugs do laboratories test for?

§ 40.87 What are the cutoff concentrations for drug tests?

§ 40.89 What is validity testing, and are laboratories required to conduct it?

§ 40.91 What validity tests must laboratories conduct on primary specimens?

§ 40.93 What criteria do laboratories use to establish that a specimen is dilute or substituted?

§ 40.95 What are the adulterant cutoff concentrations for initial and confirmation tests?

§ 40.96 What criteria do laboratories use to establish that a specimen is invalid?

§ 40.97 What do laboratories report and how do they report it?

§ 40.99 How long does the laboratory retain specimens after testing?

§ 40.101 What relationship may a laboratory have with an MRO?

§ 40.107 Who may inspect laboratories?

§ 40.109 What documentation must the laboratory keep, and for how long?

§ 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

§ 40.113 Where is other information concerning laboratories found in this regulation?

#### Subpart G Medical Review Officers and the Verification Process

§ 40.121 Who is qualified to act as an MRO?

§ 40.123 What are the MRO's responsibilities in the DOT drug testing program?

§ 40.125 What relationship may an MRO have with a laboratory?

§ 40.127 What are the MRO's functions in reviewing negative test results?

§ 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug

test results?

§ 40.131 How does the MRO or DER notify an employee of the verification process after receiving laboratory confirmed non-negative drug test results?

§ 40.133 Without interviewing the employee, under what circumstances may the MRO verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid?

§ 40.135 What does the MRO tell the employee at the beginning of the verification interview?

§ 40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, semi-synthetic opioids, or PCP?

§ 40.139 On what basis does the MRO verify test results involving 6-acetylmorphine, codeine, and morphine?

§ 40.141 How does the MRO obtain information for the verification decision?

§ 40.143 [Reserved]

§ 40.145 On what basis does the MRO verify test results involving adulteration or substitution?

§ 40.147 [Reserved]

§ 40.149 May the MRO change a verified drug test result?

§ 40.151 What are MROs prohibited from doing as part of the verification process?

§ 40.153 How does the MRO notify employees of their right to a test of the split specimen?

§ 40.155 What does the MRO do when a negative or positive test result is also dilute?

§ 40.157 [Reserved]

§ 40.159 What does the MRO do when a drug test result is invalid?

§ 40.160 What does the MRO do when a valid test result cannot be produced and a negative result is required?

§ 40.161 What does the MRO do when a drug test specimen is rejected for testing?

§ 40.162 What must MROs do with multiple verified results for the same testing event?

§ 40.163 How does the MRO report drug test results?

§ 40.165 To whom does the MRO transmit reports of drug test results?

§ 40.167 How are MRO reports of drug results transmitted to the employer?

§ 40.169 Where is other information concerning the role of MROs and the verification process found in this regulation?

#### Subpart H Split Specimen Tests

§ 40.171 How does an employee request a test of a split specimen?

§ 40.173 Who is responsible for paying for the test of a split specimen?

§ 40.175 What steps does the first laboratory take with a split specimen?

§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?

§ 40.181 What does the second laboratory do with the split specimen when it is tested to

reconfirm a substituted test result?

**§ 40.183** What information do laboratories report to MROs regarding split specimen results?

**§ 40.185** Through what methods and to whom must a laboratory report split specimen results?

**§ 40.187** What does the MRO do with split specimen laboratory results?

**§ 40.189** Where is other information concerning split specimens found in this regulation?

#### **Subpart I** Problems in Drug Tests

**§ 40.191** What is a refusal to take a DOT drug test, and what are the consequences?

**§ 40.193** What happens when an employee does not provide a sufficient amount of urine for a drug test?

**§ 40.195** What happens when an individual is unable to provide a sufficient amount of urine for a pre-employment follow-up or return-to-duty test because of a permanent or long-term medical condition?

**§ 40.197** What happens when an employer receives a report of a dilute specimen?

**§ 40.199** What problems always cause a drug test to be cancelled?

**§ 40.201** What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

**§ 40.203** What problems cause a drug test to be cancelled unless they are corrected?

**§ 40.205** How are drug test problems corrected?

**§ 40.207** What is the effect of a cancelled drug test?

**§ 40.208** What problem requires corrective action but does not result in the cancellation of a test?

**§ 40.209** What procedural problems do not result in the cancellation of a test and do not require correction?

**§ 40.210** Are drug tests other than urine permitted under the regulations?

#### **Subpart J** Alcohol Testing Personnel

**§ 40.211** Who conducts DOT alcohol tests?

**§ 40.213** What training requirements must STTs and BATs meet?

**§ 40.215** What information about the DER do employers have to provide to BATs and STTs?

**§ 40.217** Where is other information on the role of STTs and BATs found in this regulation?

#### **Subpart K** Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

**§ 40.221** Where does an alcohol test take place?

**§ 40.223** What steps must be taken to protect the security of alcohol testing sites?

**§ 40.225** What form is used for an alcohol test?

**§ 40.227** May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

**§ 40.229** What devices are used to conduct alcohol screening tests?

**§ 40.231** What devices are used to conduct alcohol confirmation tests?

**§ 40.233** What are the requirements for proper use and care of EBTs?

**§ 40.235** What are the requirements for proper use and care of ASDs?

#### **Subpart L** Alcohol Screening Tests

§ 40.241 What are the first steps in any alcohol screening test?

§ 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

§ 40.247 What procedures does the BAT or STT follow after a screening test result?

#### Subpart M Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?

§ 40.253 What are the procedures for conducting an alcohol confirmation test?

§ 40.255 What happens next after the alcohol confirmation test result?

#### Subpart N Problems in Alcohol Testing

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

§ 40.267 What problems always cause an alcohol test to be cancelled?

§ 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

§ 40.271 How are alcohol testing problems corrected?

§ 40.273 What is the effect of a cancelled alcohol test?

§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

§ 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

#### Subpart O Substance Abuse Professionals and the Return-to-Duty Process

§ 40.281 Who is qualified to act as a SAP?

§ 40.283 How does a certification organization obtain recognition for its members as SAPs?

§ 40.285 When is a SAP evaluation required?

§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

§ 40.289 Are employers required to provide SAP and treatment services to employees?

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?

§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

**§ 40.303** What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?

**§ 40.305** How does the return-to-duty process conclude?

**§ 40.307** What is the SAP's function in prescribing the employee's follow-up tests?

**§ 40.309** What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

**§ 40.311** What are the requirements concerning SAP reports?

**§ 40.313** Where is other information on SAP functions and the return-to-duty process found in this regulation?

#### **Subpart P** Confidentiality and Release of Information

**§ 40.321** What is the general confidentiality rule for drug and alcohol test information?

**§ 40.323** May program participants release drug or alcohol test information in connection with legal proceedings?

*§ 40.325 [Reserved]*

**§ 40.327** When must the MRO report medical information gathered in the verification process?

**§ 40.329** What information must laboratories, MROs, and other service agents release to employees?

**§ 40.331** To what additional parties must employers and service agents release information?

**§ 40.333** What records must employers keep?

#### **Subpart Q** Roles and Responsibilities of Service Agents

**§ 40.341** Must service agents comply with DOT drug and alcohol testing requirements?

**§ 40.343** What tasks may a service agent perform for an employer?

**§ 40.345** In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

**§ 40.347** What functions may C/TPAs perform with respect to administering testing?

**§ 40.349** What records may a service agent receive and maintain?

**§ 40.351** What confidentiality requirements apply to service agents?

**§ 40.353** What principles govern the interaction between MROs and other service agents?

**§ 40.355** What limitations apply to the activities of service agents?

#### **Subpart R** Public Interest Exclusions

**§ 40.361** What is the purpose of a public interest exclusion (PIE)?

**§ 40.363** On what basis may the Department issue a PIE?

**§ 40.365** What is the Department's policy concerning starting a PIE proceeding?

**§ 40.367** Who initiates a PIE proceeding?

**§ 40.369** What is the discretion of an initiating official in starting a PIE proceeding?

**§ 40.371** On what information does an initiating official rely in deciding whether to start a PIE proceeding?

**§ 40.373** Before starting a PIE proceeding, does the initiating official give the service agent an

opportunity to correct problems?

- § 40.375 How does the initiating official start a PIE proceeding?
- § 40.377 Who decides whether to issue a PIE?
- § 40.379 How do you contest the issuance of a PIE?
- § 40.381 What information do you present to contest the proposed issuance of a PIE?
- § 40.383 What procedures apply if you contest the issuance of a PIE?
- § 40.385 Who bears the burden of proof in a PIE proceeding?
- § 40.387 What matters does the Director decide concerning a proposed PIE?
- § 40.389 What factors may the Director consider?
- § 40.391 What is the scope of a PIE?
- § 40.393 How long does a PIE stay in effect?
- § 40.395 Can you settle a PIE proceeding?
- § 40.397 When does the Director make a PIE decision?
- § 40.399 How does the Department notify service agents of its decision?
- § 40.401 How does the Department notify employers and the public about a PIE?
- § 40.403 Must a service agent notify its clients when the Department issues a PIE?
- § 40.405 May the Federal courts review PIE decisions?
- § 40.407 May a service agent ask to have a PIE reduced or terminated?
- § 40.409 What does the issuance of a PIE mean to transportation employers?
- § 40.411 What is the role of the DOT Inspector General's office?
- § 40.413 How are notices sent to service agents?

#### **Appendix A to Part 40**

DOT Standards for Urine Collection Kits

#### **Appendix B to Part 40**

DOT Drug-Testing Semi-Annual Laboratory Report to Employers

#### **Appendix C to Part 40**

DOT Drug-Testing Semi-Annual Laboratory Report to DOT

#### **Appendix D to Part 40**

Report Format: Split Specimen Failure To Reconfirm

#### **Appendix E to Part 40**

SAP Equivalency Requirements for Certification Organizations

#### **Appendix F to Part 40**

Drug and Alcohol Testing Information that C/TPAs May Transmit  
to Employers

#### **Appendix G to Part 40**

Alcohol Testing Form

#### **Appendix H to Part 40**



See the rest on page 117 of this CSC packet

Edwin M. Lee | Mayor  
 Tom Nolan | Chairman  
 Jerry Lee | Vice-Chairman  
 Leona Bridges | Director  
 Cheryl Brinkman | Director  
 Malcolm Heinicke | Director  
 Bruce Oka | Director  
 Joél Ramos | Director  
 Edward D. Reiskin | Director of Transportation

**MEMORANDUM**

**DATE:** February 21, 2012

**TO:** DHR-PSC Coordinator  
 Department of Human Resources

**FROM:** Parveen Boparai, Sr. Personnel Analyst *PB*  
 Personal Services Contract Coordinator  
 San Francisco Municipal Transportation Agency (SFMTA)

**RE:** Request to Increase Duration of: PSC # 3094-07/08 Approved on 03/04/08  
 Awarded to: University Services.  
 Type of Service: Medical Review Officer.

This memo is to request an increase in duration of the Personal Services Contract (PSC) listed above.

A personal service contract does not require approval from Civil Service Commission (CSC) if an increase is less than fifty percent (50%) of the contract amount or duration approved by CSC or SFMTA.

Initial Contract Amount:	\$50,000.00	05/01/08 – 04/30/12
<b>Modification to Increase Duration:</b>	<b>\$00,000.00</b>	<b>05/01/08 – 07/31/12</b>
<b>Total:</b>	<b>\$50,000.00</b>	<b>05/01/08 – 07/31/12</b>

**Reason for Modification:** This contract expires on July 31, 2012, instead of April 30, 2012. An extension of the duration of this PSC is the only modification requested.

**Attachment:** Copy of Original PSC Summary (02/21/08)

**cc:** Reggie Smith, CEAP, CSAP  
 PSC File

.....  
**FOR DEPARTMENT OF HUMAN RESOURCES USE**

**DHR Action:**  Approved

**Approval Date:** 2/24/12

**By:**   
 FOR Micki Callahan, Human Resources Director

City and County of San Francisco  
Gavin Newsom  
Mayor



Department of Human Resources  
Micki Callahan  
Human Resources Director

## NOTICE OF ACTION

March 04, 2008

Parveen Boparai  
Municipal Transportation Agency  
401 Van Ness Avenue, Room 320  
San Francisco, CA 94102

Dear Ms. Boparai:

This is to notify you of the approval of the following Personal Services Contract(s) by the Department of Human Resources in accordance with, and under the authority of, the Civil Service Commission procedures for processing Personal Services Contracts:

<u>PSC Number</u>	<u>Amount</u>	<u>Description of work</u>
3094-07/08	\$50,000	Will provide medical consulting services to the Municipal Transportation Agency (SFMTA) and report testing results to the Employee Services Section Manager.

by: Emily Morrison for  
Micki Callahan  
Human Resources Director

PERSONAL SERVICES CONTRACT SUMMARY

DATE: February 21, 2008

DEPARTMENT NAME: Municipal Transportation Agency

DEPARTMENT NUMBER: 35

TYPE OF APPROVAL: (X) EXPEDITED ( ) REGULAR (OMIT POSTING \_\_\_)
( ) CONTINUING ( ) ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST ( ) MODIFICATION (PSC# \_\_\_\_\_)

TYPE OF SERVICE: Medical Review Officer

FUNDING SOURCE: Operating Budget

PSC AMOUNT: \$50,000.00

PSC DURATION: May 1, 2008 through April 30, 2012

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

To provide medical consulting services to the Municipal Transportation Agency (SFMTA) and report testing results to the Employee Services Section Manager.

B. Explain why this service is necessary and the consequences of denial:

This is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) rules. Denial of this service will jeopardize continued transit agency Federal funding assistance and consequently affect the MTA's operations if the program is not in place.

C. Explain how this service has been provided in the past (if this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

University Services has previously provided this service under Personal Services Contract number 3112-03/04 for the period of May 1, 2004 to April 30, 2008. The CSC approved this contract on May 18, 2004.

D. Will the contract(s) be renewed:

Yes. The contract will be renewed every year for the next four (4) years.

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

N/A
Union Name Signature of person mailing / faxing form Date

Union Name Signature of person mailing / faxing form Date

RFP sent to Union Name on Date Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 3094-07/08

MTA Approved 2-26-08

Approved [Signature]

STAFF ANALYSIS/RECOMMENDATION:
CIVIL SERVICE COMMISSION ACTION:

PB

RECEIVED BY
DEPARTMENT OF
HUMAN RESOURCES
2008 MAR -4 AM 7:49

**3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE**

**A. Specify required skills and/or expertise:**

Contractor must be a licensed physician who possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results.

**B. Which, if any, civil service class normally performs this work?**

Classifications such as 2220 Physician or 2230 Physician Specialist may perform this work; however, these classifications may not possess the specialized discipline and experience (knowledge of substance abuse disorders with appropriate training and certification) that is required by Federal Regulations.

**C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:**

Yes. The contractual services will include all necessary facilities and/or equipment which the City is unable to provide. With the contractor providing its own facilities and necessary equipment, the City will not expend any additional monies to set-up a facility, purchase equipment and provide staffing.

**4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM**

**A. Explain why civil service classes are not applicable:**

Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is licensed and possesses the knowledge, experience, certification, and medical training in substance abuse disorders and drug test results interpretation. This type of specialized position is not classified by the City.

**B. Would it be practical to adopt a new civil service class to perform this work? Explain.**

No. Adopting a new civil service class may result in a recruitment and retention problem and consequently affect the required services under DOT/FTA rules.

**5. ADDITIONAL INFORMATION (if "yes", attach explanation)**

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	( )	(X)
B. Will the contractor train City and County employees?	( )	(X)
C. Are there legal mandates requiring the use of contractual services? <b>49 CFR Part 40</b>	(X)	( )
D. Are there federal or state grant requirements regarding the use of contractual services? <b>49 CFR Part 40</b>	(X)	( )
E. Has a board or commission determined that contracting is the most effective way to provide this service? <b>MTA Resolution #99-116</b>	(X)	( )
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department?	( )	(X)

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

*Parveen Boparai, Sr. Personnel Analyst*

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai  
Print or Type Name

(415) 554-4160  
Telephone Number

Municipal Transportation Agency, Human Resources

401 Van Ness Avenue, Room 320, San Francisco, CA 94102  
Address

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH -- DPH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Administration and Provision of Medical Services for a

Funding Source: General Funds, Grant Funds, Reimbursement PSC Duration: 4 years 35 weeks

PSC Amount: \$5,000,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The selected contractor will administer and provide services in a "test to treat" program in support of the ongoing COVID-19 response and possibly other communicable diseases. Under a test to treat program, individuals can get tested and—if they are positive and treatments are appropriate for them—receive a prescription from a health care provider and have their prescription filled, all in one location.

B. Explain why this service is necessary and the consequence of denial:

The services are necessary in order to provide effective services to people that have been diagnosed with COVID-19 or other applicable diseases. If the request is denied, such individuals will not be able to get rapid treatment options once they have tested positive and there will be increased risk of disease spread.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This is a new model of treatment. During the pandemic the City has referred individuals to existing State and Federally provided test to treat programs.

D. Will the contract(s) be renewed?

Only if there is a continued need and ongoing funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.  
not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

These are new services and for a limited use case and are intermittent and as-needed as the number of cases remain low there may be a limited need for these services.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Contractor must have medical doctors that can design a treatment program, diagnose conditions, prescribe medically appropriate therapies and be available for follow up care in person or remotely.

- B. Which, if any, civil service class(es) normally perform(s) this work? 2218, Physician Assistant; 2230, Physician Specialist; 2232, Senior Physician Specialist; 2233, Supervising Physician Spec;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:  
Yes the provider will need to have the appropriate infrastructure to provide medical services in a variety of ways such as in-person, or remote.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

These are new services and for a limited use case. At the present time it would not be practical to reassign current civil service staff to take on new responsibilities.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
These are new services and for a limited use case. At the present time it would not be practical to reassign current civil service staff to take on new responsibilities.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. Not at the present time. These are new services and for a limited use case. At the present time it would not be practical to reassign current civil service staff to take on new responsibilities. Existing civil service staff can learn from contract staff in certain areas of service that will be performed. Knowledge transfer can occur in the areas of providing a test to treat program to diverse patients and populations as well as possibly learning how to provide these types of medical services remotely.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. Training is not included in this contract. Knowledge transfer can occur in the areas of providing a test to treat program to diverse patients and populations as well as possibly learning how to provide these types of medical services remotely.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification: On 02/17/2023, the Department notified the following employee organizations of this PSC/RFP request:**

Architect & Engineers, Local 21; Management & Superv Local 21; Physicians and Dentists - 11AA; Physicians and Dentists - 8CC; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 1380 Howard St. San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 40782 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023



# **Receipt of Union Notification(s)**

Receipt of Notice for new PCS over \$100K PSC # 40782 - 22/23

dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org>

on behalf of

kelly.hiramoto@sfdph.org <kelly.hiramoto@sfdph.org>

Fri 2/17/2023 5:27 PM

To: Hiramoto, Kelly (DPH) <kelly.hiramoto@sfdph.org>; Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>; amakayan@ifpte21.org <amakayan@ifpte21.org>; Pierre King - UAPD <pking@UAPD.com>; tjenkins@uapd.com <tjenkins@uapd.com>; jduritz@uapd.com <jduritz@uapd.com>; ewallace@ifpte21.org <ewallace@ifpte21.org>; ecassidy@ifpte21.com <ecassidy@ifpte21.com>; WendyWong26@yahoo.com <WendyWong26@yahoo.com>; WendyWong26@yahoo.com <WendyWong26@yahoo.com>; tmathews@ifpte21.org <tmathews@ifpte21.org>; kschumacher@ifpte21.org <kschumacher@ifpte21.org>; kpage@ifpte21.org <kpage@ifpte21.org>; eerbach@ifpte21.org <eerbach@ifpte21.org>; l21pscreview@ifpte21.org <l21pscreview@ifpte21.org>; Longhitano, Robert (DPH) <robert.longhitano@sfdph.org>; DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>

RECEIPT for Union Notification for PSC 40782 - 22/23 more than \$100k

The PUBLIC HEALTH -- DPH has submitted a request for a Personal Services Contract (PSC) 40782 - 22/23 for \$5,000,000 for Initial Request services for the period 05/01/2023 – 12/31/2027. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19942> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions

you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again, change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Caltrans' review of design documents relevant to project element within Caltrans' jurisdiction

Funding Source: SFPUC Wastewater Enterprise Capital Fundin

PSC Duration: 3 years 7 weeks

PSC Amount: \$450,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The scope of proposed work is to have California Department of Transportation (Caltrans) performed technical review of the Project Study Report-Project Report (PSR-PR) in order to obtain Caltrans' approval for Lower Alemany Area Stormwater Improvements Project (LAASIP) as several project elements (including the tunnel shaft and portions of tunnel) will be within Caltrans' jurisdiction. LAASIP is one of the regulatory compliance projects to improve collection system capacity during wet weather months within the area between Ellsworth Street and Barneveld Avenue in the Lower Alemany Area of San Francisco.

B. Explain why this service is necessary and the consequence of denial:

Caltrans' review is critical because Caltrans' approval is needed for the progression of the proposed design in order to improve collection system capacity for the Lower Alemany area. Denial of Caltrans' review will risk delay to project implementation by regulatory compliance date of March 2028.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

No

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.  
not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

No because the review and approval of project elements within Caltrans' jurisdiction is specific within Caltrans' purview.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Proven experiences and expertise are needed in the areas of Caltrans' design, operation and maintenance of Caltrans' facilities.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5207, Assoc Engineer; 5211, Eng/Arch/Landscape Arch Sr; 5241, Engineer;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City staff can't provide the service because the review and approval of project elements within Caltrans' jurisdiction is specific within Caltrans' purview

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The review and approval of project elements within Caltrans' jurisdiction is specific within Caltrans' purview.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the review and approval of project elements within Caltrans' jurisdiction is specific within Caltrans' purview.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. No. Training is not part of this PSC because the review and approval are within Caltrans' purview only.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification: On 02/17/2023, the Department notified the following employee organizations of this PSC/RFP request:**

Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sfgwater.org

Address: 525 Golden Gate Ave 8th Floor San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 49192 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

**From:** [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) on behalf of [shale@sfgov.org](mailto:shale@sfgov.org)  
**To:** [Hale, Shawndrea M.](mailto:Hale,Shawndrea.M.); [junko.laxamana@sfgov.org](mailto:junko.laxamana@sfgov.org); [ewallace@ifpte21.org](mailto:ewallace@ifpte21.org); [WendyWong26@yahoo.com](mailto:WendyWong26@yahoo.com); [wendywong26@yahoo.com](mailto:wendywong26@yahoo.com); [tmathews@ifpte21.org](mailto:tmathews@ifpte21.org); [kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org); [amakayan@ifpte21.org](mailto:amakayan@ifpte21.org); [L21PSCReview@ifpte21.org](mailto:L21PSCReview@ifpte21.org); [Hale, Shawndrea M.](mailto:Hale,Shawndrea.M.); [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 49192 - 22/23  
**Date:** Friday, February 17, 2023 4:14:06 PM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 49192 - 22/23 more than \$100k

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a request for a Personal Services Contract (PSC) 49192 - 22/23 for \$450,000 for Initial Request services for the period 02/07/2023 – 03/31/2026. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19944> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW

Dept. Code: DPW

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: As Needed Waterproofing Consultation Services

Funding Source: Inter-Departmental Work Orders

PSC Amount: \$3,000,000

PSC Est. Start Date: 04/17/2023

PSC Est. End Date 12/31/2029

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Provide specialized services in Waterproofing Consultation to support Public Works design staff on an as-needed basis. The Consultants will provide expert waterproofing consultation services to ensure that our projects are designed and constructed to the best quality standards of waterproofing. Periodically, provide independent third-party evaluation of design prepared by City staff from waterproofing perspective.

B. Explain why this service is necessary and the consequence of denial:

Waterproofing consultants are highly specialized consultants who are experts in the area of construction details and specifications that are geared towards minimizing the risk of water intrusion in buildings. Waterproofing Consultants are experts who are knowledgeable about all aspects of waterproofing. The scope of work for the waterproofing consultant is to recommend systems and review drawings and specifications of waterproofing details and specifications to reduce the risk of water intrusion. In addition, the Waterproofing Consultant provides field observations during construction to ensure that the construction is proceeding per the drawings and specifications in relation to waterproofing. This is a specialized consulting service outside our area of expertise. Denial may cause delays to design and construction of City projects and may increase risk of water leaks/intrusions, which would in turn result in additional costs to the City.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has been provided in the past through personal services contract approval number PSC#49451-21/22 approved on 2/7/2022.

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The additional time in the PSC Duration is to allow for any delays in processing and awarding the contracts. The contracts will have duration of no more than 5 years.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).



B. Explain the qualifying circumstances:

This service will only be required on an as-needed basis when either City staff don't have the capacity to fulfill all project requests, causing delays, or if high quality specialized services are required. Periodically, it is in the City's best interest to hire independent third party waterproofing experts to evaluate the designs prepared by City staff or to inspect and test the construction completed by Contractors hired by the City, especially where water intrusion has occurred and damages to structures and harm to staff and/or public are possible.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Consultants must have extensive knowledge, experience, and expertise on waterproofing materials, installation methods, preparation of plans, details, specifications, and cost estimates. Consultants must also have extensive experience in assessments, inspection, and testing of waterproofing installations, and writing assessment and recommendation reports. Consultants shall be architects or engineers licensed in the state of California and must be experts in the waterproofing field.

B. Which, if any, civil service class(es) normally perform(s) this work? 5120, Architectural Administrator; 5211, Eng/Arch/Landscape Arch Sr; 5212, Engineer/Architect Principal; 5265, Architectural Associate 1; 5266, Architectural Associate 2; 5268, Architect;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City does not have resources or expertise available to perform all required work due to current and on-going workload. The Department is in the process of hiring more people for above civil service classes. As-needed contract services will only be utilized when and if the work cannot be prudently performed by internal staff. It is also noted that the use of this consultant's level of expertise is part of our Quality Control/Quality Assurance process to ensure we have a high level of technical drawings as they provide a peer review of our contract documents prepared in house and provide comments and/or edits. This consultant also acts as an Subject Matter Expert when waterproofing issues come up during the construction document phase and during construction as required.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Where applicable, civil service classifications will be utilized; these consultant services will be utilized when the following conditions exist: (1) City staff is working at full capacity and postponement of pending projects would be contrary to the public interest, or (2) Project requires third party waterproofing expert to ensure that a high quality project is achieved.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The services are only going to be utilized on an as-needed basis. There is no ongoing demand that justifies hiring of permanent City staff.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. No. The services are only going to be utilized on an as-needed basis. There is no ongoing demand for this work. Periodically, Consultant is to provide independent third-party evaluation of designs prepared by City staff for waterproofing purposes.

C. Are there legal mandates requiring the use of contractual services?  
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 02/16/2023, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Alexander Burns Phone: 415-554-6411 Email: alexander.burns@sfdpw.org

Address: 49 South Van Ness Ave, Suite 1600 San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 46787 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

**From:** [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) on behalf of [alexander.burns@sfdpw.org](mailto:alexander.burns@sfdpw.org)  
**To:** [Burns, Alexander \(DPW\)](mailto:Burns,Alexander@DPW); [ewallace@ifpte21.org](mailto:ewallace@ifpte21.org); [ecassidy@ifpte21.com](mailto:ecassidy@ifpte21.com); [WendyWong26@yahoo.com](mailto:WendyWong26@yahoo.com); [wendywong26@yahoo.com](mailto:wendywong26@yahoo.com); [tmathews@ifpte21.org](mailto:tmathews@ifpte21.org); [kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org); [kpage@ifpte21.org](mailto:kpage@ifpte21.org); [eerbach@ifpte21.org](mailto:eerbach@ifpte21.org); [l21pscreview@ifpte21.org](mailto:l21pscreview@ifpte21.org); [Sy\\_Don \(DPW\)](mailto:Sy_Don@DPW); [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator,DHR(HRD))  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 46787 - 22/23  
**Date:** Thursday, February 16, 2023 1:19:33 PM

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RECEIPT for Union Notification for PSC 46787 - 22/23 more than \$100k

The GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW has submitted a request for a Personal Services Contract (PSC) 46787 - 22/23 for \$3,000,000 for Initial Request services for the period 04/17/2023 – 12/31/2029. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/19880> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - PUBLIC WORKS -- DPW

Dept. Code: DPW

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: As-Needed Waterproofing Consultation Services

Funding Source: Interdepartmental Work Orders

PSC Amount: \$1,500,000

PSC Est. Start Date: 01/17/2022

PSC Est. End Date: 06/30/2028

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

Provide specialized services in Waterproofing Consultation to support Public Works design staff on an as-needed basis. The Consultants will provide expert waterproofing consultation services to ensure that our projects are designed and constructed to the best quality standards of waterproofing. Periodically, provide independent third-party evaluation of design prepared by City staff from waterproofing perspective.

**B. Explain why this service is necessary and the consequence of denial:**

Waterproofing consultants are highly specialized consultants who are experts in the area of construction details and specifications that are geared towards minimizing the risk of water intrusion in buildings. Waterproofing Consultants are experts who are knowledgeable about all aspects of waterproofing. The scope of work for the waterproofing consultant is to recommend systems and review drawings and specifications of waterproofing details and specifications to reduce the risk of water intrusion. In addition, the Waterproofing Consultant provides field observations during construction to ensure that the construction is proceeding per the drawings and specifications in relation to waterproofing. This is a specialized consulting service outside our area of expertise. Denial may cause delays to design and construction of City projects and may increase risk of water leaks/intrusions, which would in turn result in additional costs to the City.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

Yes, this service has been provided in the past. Most recent personal services contract approval number is PSC#4040-13/14 approved on 11/14/2013.

**D. Will the contract(s) be renewed?**

No

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**

The additional time in the PSC Duration is to allow for any delays in processing and awarding the contracts. The contracts will have duration of no more than 5 years.

**2. Reason(s) for the Request**

**A. Indicate all that apply (be specific and attach any relevant supporting documents):**

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

**B. Explain the qualifying circumstances:**

This service will only be required on an as-needed basis when either City staff don't have the capacity to fulfill all project requests, causing delays, or if high quality specialized services are required. Periodically, it is in the City's best interest to hire independent third party waterproofing experts to evaluate the designs prepared by City staff or to inspect and test the construction completed by Contractors hired by the City, especially where water intrusion has occurred and damages to structures and harm to staff and/or public are possible.

**3. Description of Required Skills/Expertise**

**A. Specify required skills and/or expertise:** Consultants must have extensive knowledge, experience, and expertise on waterproofing materials, installation methods, preparation of plans, details, specifications, and cost estimates. Consultants must also have extensive experience in assessments, inspection, and testing of waterproofing installations, and writing assessment and recommendation reports. Consultants shall be architects or engineers licensed in the state of California and must be experts in the waterproofing field.

**B. Which, if any, civil service class(es) normally perform(s) this work?** 5120, Architectural Administrator; 5211, Eng/Arch/Landscape Arch Sr; 5212, Engineer/Architect Principal; 5265, Architectural Associate 1; 5266, Architectural

Associate 2; 5268, Architect;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The City does not have resources or expertise available to perform all required work due to current and on-going workload. The Department is in the process of hiring more people for above civil service classes. As-needed contract services will only be utilized when and if the work cannot be prudently performed by internal staff. It is also noted that the use of this consultant's level of expertise is part of our Quality Control/Quality Assurance process to ensure we have a high level of technical drawings as they provide a peer review of our contract documents prepared in house and provide comments and/or edits. This consultant also acts as a Subject Matter Expert when waterproofing issues come up during the construction document phase and during construction as required.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Where applicable, civil service classifications will be utilized; these consultant services will be utilized when the following conditions exist: (1) City staff is working at full capacity and postponement of pending projects would be contrary to the public interest, or (2) Project requires third party waterproofing expert to ensure that a high quality project is achieved.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The services are only going to be utilized on an as-needed basis. There is no ongoing demand that justifies hiring of permanent City staff.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. No. The services are only going to be utilized on an as-needed basis. There is no ongoing demand for this work. Periodically, Consultant is to provide independent third-party evaluation of designs prepared by City staff for waterproofing purposes.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 11/16/2021, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Alexander Burns Phone: 415-554-6411 Email: alexander.burns@sfdpw.org

Address: 49 South Van Ness, Suite 1600 San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 49451 - 21/22

DHR Analysis/Recommendation:

action date: 02/07/2022

Commission Approval Required

Approved by Civil Service Commission

02/07/2022 DHR Approved for 02/07/2022

# **Modification**

## **Personal Services Contracts**



PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request:  Initial  Modification of an existing PSC (PSC # 40890 - 14/15)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Program Management Support Services (PMSS) for the Capital Improvement Program (CIP).

Funding Source: Airport Capital Funds

PSC Original Approved Amount: \$10,000,000 PSC Original Approved Duration: 06/01/15 - 12/31/20 (5 years 30 weeks)

PSC Mod#1 Amount: \$40,000,000 PSC Mod#1 Duration: 02/06/17-12/31/21 (1 year).

PSC Mod#2 Amount: \$20,000,000 PSC Mod#2 Duration: 12/31/21-12/31/24 (3 years 1 day).

PSC Mod#3 Amount: \$40,000,000 PSC Mod#3 Duration: 12/31/24-12/31/29 (5 years 1 day).

PSC Cumulative Amount Proposed: \$110,000,000 PSC Cumulative Duration Proposed: 14 years 31 weeks

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

The Program Management Support Services Consultant (Consultant) will provide overall management expertise and oversight of the Capital Improvement Project (CIP) at the San Francisco International Airport (Airport). The scope of work will include project scoping and programming, design and construction management services, project controls for overall CIP, contract administration, cost estimating services, field inspection, document control, and other services in support of the CIP.

**B. Explain why this service is necessary and the consequence of denial:**

Services are necessary to implement the large number of CIP projects while maintaining consistency in reporting and cost controls. Consultant project teams must track and report costs using a comprehensive, consistent approach to assist in the planning of resources, project funding, and to manage risk. If denied, inconsistency in project controls will delay projects and may result in lost revenue.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

PSC 40890-14/15

**D. Will the contract(s) be renewed?**

Yes, if there continues to be a need at the Airport.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

These support services are for the Airport's CIP, which will span greater than a five year period to implement.

**2. Reason(s) for the Request**

**A. Display all that apply**

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Specific expertise and/or knowledge is required on a short-term basis in support of the CIP.

**B. Reason for the request for modification:**

Need to add time and authority

**3. Description of Required Skills/Expertise**

**A. Specify required skills and/or expertise:** Required skills include industry-leading expertise with knowledge and experience managing large, complex airport programs. In addition, expertise in project scoping and programming,

design and construction management services, project controls for overall CIP are required. This work will require industry-leading expertise in complex airport capital program management that is only garnered from experience on another large airport capital program.

- B. Which, if any, civil service class(es) normally perform(s) this work? 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3; 5508, Project Manager 4;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**  
Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Project Management (PM) civil service classifications exist but this work requires industry-leading expertise in complex airport capital program management that is only garnered from experience on another large airport capital program. The existing architectural, engineering, and construction-related classifications do not have the skills and experience necessary to provide the strategic guidance the Airport needs for the Capital Improvement Program.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Positions are specific to CIP and will not be needed beyond the program. Individuals acquire required skills & experience through airport assignments across the world. The team will work alongside City PMs throughout CIP with much of their value in educating City PMs of capital program management best practices.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
Training will not be included since the specialized skills required are needed on a temporary basis, specific to the CIP.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes, Hill International, Inc.

**7. Union Notification: On 03/14/23, the Department notified the following employee organizations of this PSC/RFP request: Architect & Engineers, Local 21;**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: P.O. Box 8097, San Francisco, CA 94128

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 40890 - 14/15

DHR Analysis/Recommendation:  
Commission Approval Required  
DHR Approved for 04/17/2023

Civil Service Commission Action:

# **Receipt of Union Notification(s)**

**From:** [DHR-PSCCoordinator, DHR \(HRD\)](#)  
**To:** [Sung Kim \(AIR\)](#)  
**Subject:** FW: Receipt of Modification Request to PSC # 40890 - 14/15 - MODIFICATIONS  
**Date:** Tuesday, March 14, 2023 2:08:54 PM

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FYI

-----Original Message-----

From: dhr-psccoordinator@sfgov.org <dhr-psccoordinator@sfgov.org> On Behalf Of cynthia.avakian@flysfo.com  
Sent: Tuesday, March 14, 2023 1:46 PM  
To: Cynthia Avakian (AIR) <cynthia.avakian@flysfo.com>; eworker@ifpte21.org; ecassidy@ifpte21.com;  
WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org;  
kpage@ifpte21.org; eerbach@ifpte21.org; l21pscreview@ifpte21.org; lisa.randall@flysfo.com; DHR-  
PSCCoordinator, DHR (HRD) <dhr-psccoordinator@sfgov.org>  
Subject: Receipt of Modification Request to PSC # 40890 - 14/15 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The AIRPORT COMMISSION -- AIR has submitted a modification request for a Personal Services Contract (PSC) for \$40,000,000 for services for the period December 31, 2024 – December 31, 2029. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/8340>

Email sent to the following addresses: L21PSCReview@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org  
kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com  
ecassidy@ifpte21.com eworker@ifpte21.org

# **Additional Attachment(s)**

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSIONDept. Code: AIRType of Request:  Initial  Modification of an existing PSC (PSC # 40890 - 14/15)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: Program Management Support Services (PMSS) for the Capital Improvement Program (CIP)Funding Source: Airport Capital FundsPSC Original Approved Amount: \$10,000,000PSC Original Approved Duration: 06/01/15 - 12/31/20 (5 years 30 weeks)PSC Mod#1 Amount: \$40,000,000PSC Mod#1 Duration: 02/06/17-12/31/21 (1 year)PSC Mod#2 Amount: \$20,000,000PSC Mod#2 Duration: 12/31/21-12/31/24 (3 years 1 day)PSC Cumulative Amount Proposed: \$70,000,000PSC Cumulative Duration Proposed: 9 years 30 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

The Program Management Support Services Consultant (Consultant) will provide overall management expertise and oversight of the Capital Improvement Project (CIP) at the San Francisco International Airport (Airport). The scope of work will include project scoping and programming, design and construction management services, project controls for overall CIP, contract administration, cost estimating services, field inspection, document control, and other services in support of the CIP.

**B. Explain why this service is necessary and the consequence of denial:**

Services are necessary to implement the large number of CIP projects while maintaining consistency in reporting and cost controls. Consultant project teams must track and report costs using a comprehensive, consistent approach to assist in the planning of resources, project funding, and to manage risk. If denied, inconsistency in project controls will delay projects and may result in lost revenue.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

PSC 40890-14/15

**D. Will the contract(s) be renewed?**

Yes, if there continues to be a need at the Airport.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

These support services are for the Airport's CIP, which will span greater than a five year period to implement.

**2. Reason(s) for the Request**

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Specific expertise and/or knowledge is required on a short-term basis in support of the CIP.

B. Reason for the request for modification:

Need to add time and authority.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Required skills include industry-leading expertise with knowledge and experience managing large, complex airport programs. In addition, expertise in project scoping and programming, design and construction management services, project controls for overall CIP are required. This work will require industry-leading expertise in complex airport capital program management that is only garnered from experience on another large airport capital program.

B. Which, if any, civil service class(es) normally perform(s) this work? 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3; 5508, Project Manager 4;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Project Management (PM) civil service classifications exist but this work requires industry-leading expertise in complex airport capital program management that is only garnered from experience on another large airport capital program. The existing architectural, engineering, and construction-related classifications do not have the skills and experience necessary to provide the strategic guidance the Airport needs for the Capital Improvement Program.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Positions are specific to CIP and will not be needed beyond the program. Individuals acquire required skills & experience through airport assignments across the world. The team will work alongside City PMs throughout CIP with much of their value in educating City PMs of capital program management best practices.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.



B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
Training will not be included since the specialized skills required are needed on a temporary basis, specific to the CIP.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes, Hill International, Inc.

7. **Union Notification:** On 08/01/18, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: P.O. Box 8097, San Francisco, CA 94128

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 40890 - 14/15

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 09/24/2018

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request:  Initial  Modification of an existing PSC (PSC # 40890 - 14/15)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Program Management Support Services (PMSS) for the Capital Improvement Program (CIP).

Funding Source: Airport Capital Funds

PSC Original Approved Amount: \$10,000,000 PSC Original Approved Duration: 06/01/15 - 12/31/20 (5 years 30 weeks)

PSC Mod#1 Amount: \$40,000,000 PSC Mod#1 Duration: 02/06/17-12/31/21 (1 year)

PSC Cumulative Amount Proposed: \$50,000,000 PSC Cumulative Duration Proposed: 6 years 30 weeks

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Program Management Support Services Consultant (Consultant) will provide overall management expertise and oversight of the Capital Improvement Project (CIP) at the San Francisco International Airport (Airport). The scope of work will include project scoping and programming, design and construction management services, project controls for overall CIP, contract administration, cost estimating services, field inspection, document control, and other services in support of the CIP.

B. Explain why this service is necessary and the consequence of denial:

Services are necessary to implement the large number of CIP projects while maintaining consistency in reporting and cost controls. Consultant project teams must track and report costs using a comprehensive, consistent approach to assist in the planning of resources, project funding, and to manage risk. If denied, inconsistency in project controls will delay projects and may result in lost revenue.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.  
Under 40890-14/15.

D. Will the contract(s) be renewed?

Yes, if there continues to be a need at the Airport.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

These support services are for the Airport's CIP, which will span greater than a five year period to implement.

**2. Reason(s) for the Request**

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Specific expertise and/or knowledge is required on a short-term basis in support of the CIP.

B. Reason for the request for modification:

The Airport is in the midst of a large-scale Capital Improvement Program (CIP) and intends to extend these support services as they have been invaluable to date for streamlining Airport business processes and facilitating construction. The additional funding will continue to provide the Airport with much needed industry expertise for the deliverance of the CIP. This modification will increase the dollar amount to account for more usage of services in support of the CIP, and extend the term to align with the required duration of services.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Required skills include industry-leading expertise with knowledge and experience managing large, complex airport programs. In addition, expertise in project scoping and programming, design and construction management services, project controls for overall CIP are required. This work will require industry-leading expertise in complex airport capital program management that is only garnered from experience on another large airport capital program.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3; 5508, Project Manager 4;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Project Management (PM) civil service classifications exist but this work requires industry-leading expertise in complex airport capital program management that is only garnered from experience on another large airport capital program. The existing architectural, engineering, and construction-related classifications do not have the skills and experience necessary to provide the strategic guidance the Airport needs for the Capital Improvement Program.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Positions are specific to CIP and will not be needed beyond the program. Individuals acquire required skills & experience through airport assignments across the world. The team will work alongside City PMs throughout CIP with much of their value in educating City PMs of capital program management best practices.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No training will be provided as part of this service.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification: On 12/20/16, the Department notified the following employee organizations of this PSC/RFP request: Architect & Engineers, Local 21;**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysf.com

Address: P.O. Box 8097, San Francisco, CA 94128

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 40890 - 14/15

DHR Analysis/Recommendation:

02/06/2017

Commission Approval Required

Approved by Civil Service Commission

02/06/2017 DHR Approved for 02/06/2017

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request:  Initial  Modification of an existing PSC (PSC # 47246 - 18/19)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Elevator, Escalator, and Electric Walk Maintenance and Repair at SFIA

Funding Source: Airport Operating Funds

PSC Original Approved Amount: \$40,000,000 PSC Original Approved Duration: 07/01/19 - 06/30/24 (5 years 1 day)

PSC Mod#1 Amount: \$20,000,000 PSC Mod#1 Duration: no duration added

PSC Mod#2 Amount: \$20,000,000 PSC Mod#2 Duration: no duration added

PSC Cumulative Amount Proposed: \$80,000,000 PSC Cumulative Duration Proposed: 5 years 1 day

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Contractor shall be responsible for the maintenance, repair, inspection, testing, repair and/or replacement of parts and components, and emergency call-back work for approximately 240 elevators, 138 escalators, and 43 electric walks at the Airport including the terminals, boarding areas, parking garages, and other field buildings.

B. Explain why this service is necessary and the consequence of denial:

These services are needed because the City does not have staff with the expertise to maintain this equipment 24 hours per day and 7 days per week. This equipment must be adequately maintained and kept in good repair in order to function properly and meet State permitting requirements. Denial of service will adversely impact the Airport's ability to safely transport customers, tenants, and employees at San Francisco International Airport with their equipment and supplies, as well as the Airport's ability to comply with certain operating and building codes.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

PSC# 47246-18/19

D. Will the contract(s) be renewed?

Yes, if there is a continued need for this service.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

PSC duration to match contract term and cover potential option period.

**2. Reason(s) for the Request**

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

Current City classifications lack the required license, specialized skills, and equipment needed to perform this work.

B. Reason for the request for modification:

Additional PSC amount for contract modification

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Contractor must possess a current and active California Contractor’s “C-11” license and have specialized experience in elevator, escalator, and electric walk maintenance and repair.
- B. Which, if any, civil service class(es) normally perform(s) this work? 7205, Chief Stationary Engineer; 7333, Apprentice Stationary Engineer; 7334, Stationary Engineer; 7335, Senior Stationary Engineer; 9354, Elevator and Crane Technician;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. Contractor will be responsible for providing all necessary tools and equipment, including specialized diagnostic equipment required to maintain safe and reliable elevator, escalator, and electric walk operation. This is to be done in accordance with the latest adopted editions of the American Society of Mechanical Engineers (ASME) Standards A17.1 – Safety Code for Elevators and Escalators, A17.2 – Inspector’s Guide for Elevators and Escalators, and A17.3 Safety Code for Existing Elevators and Escalators.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The Airport’s mechanical maintenance staff will supervise the contracted work, however, the existing classifications do not have the required contractor’s license, expertise and specialized skills related to the maintenance of these systems.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would not be practical to adopt a new civil service class solely for the performance of this work at the Airport.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
The contractor will not train City and County employees as this is specialized work to be performed by qualified, licensed workers only.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
KONE Inc and TKE Corporation

**7. Union Notification: On 03/14/23, the Department notified the following employee organizations of this PSC/RFP request:**

Stationary Engineers, Local 39; Electrical Workers, Local 6; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: PO Box 8097, San Francisco, CA 94128

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47246 - 18/19

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**





## Choi, Suzanne (HRD)

---

**From:** Chung Park <cpark@local39.org>  
**Sent:** Friday, March 17, 2023 7:47 AM  
**To:** Sung Kim (AIR)  
**Cc:** Michael Rainsford; grojo@local39.org; DHR-PSCCoordinator, DHR (HRD); Cynthia Avakian (AIR)  
**Subject:** RE: Receipt of Modification Request to PSC # 47246 - 18/19 - MODIFICATIONS

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Thank you.

Respectfully,  
Chung Y. Park  
Business Representative  
Stationary Engineers Local 39, AFL-CIO  
337 Valencia Street  
San Francisco, CA 94103  
Office 415.861.1135  
Mobile 628.222.0884  
Email [cpark@local39.org](mailto:cpark@local39.org)

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**From:** Sung Kim (AIR) <sung.kim@flysfo.com>  
**Sent:** Thursday, March 16, 2023 8:30 AM  
**To:** Chung Park <cpark@local39.org>  
**Cc:** Michael Rainsford <mrainsford@local39.org>; grojo@local39.org; DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>; Cynthia Avakian (AIR) <cynthia.avakian@flysfo.com>  
**Subject:** FW: Receipt of Modification Request to PSC # 47246 - 18/19 - MODIFICATIONS

Mr. Park - I noticed your email address was not included in this transmittal that was sent to the following email addresses in DHR's PSC database for Local 39: [grojo@local39.org](mailto:grojo@local39.org), [MRainsford@Local39.org](mailto:MRainsford@Local39.org), [seichenberger@local39.org](mailto:seichenberger@local39.org).

I am sending the below 7-day notice of modification request for PSC 47246-18/19 to you. Please let me know if you have any questions by COB, Wednesday, March 22.

Also, Suzanne at DHR will be adding your email to the PSC Database as a contact for Local 39.

Thank you,

Sung Kim  
Manager, Contracts Administration  
San Francisco International Airport | P.O. Box 8097 | San Francisco, CA 94128  
Tel 650-821-2026 | Email [sung.kim@flysfo.com](mailto:sung.kim@flysfo.com)

(preferred pronouns: he/him/his)

Facebook | Twitter | YouTube | Instagram | LinkedIn

-----Original Message-----

From: [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) <[dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)> On Behalf Of [cynthia.avakian@flysfo.com](mailto:cynthia.avakian@flysfo.com)

Sent: Tuesday, March 14, 2023 1:29 PM

To: Cynthia Avakian (AIR) <[cynthia.avakian@flysfo.com](mailto:cynthia.avakian@flysfo.com)>; Stan Eichenberger <[seichenberger@local39.org](mailto:seichenberger@local39.org)>; [MRainsford@local39.org](mailto:MRainsford@local39.org); [grojo@local39.org](mailto:grojo@local39.org); [oashworth@ibew6.org](mailto:oashworth@ibew6.org); [ewallace@ifpte21.org](mailto:ewallace@ifpte21.org); [ecassidy@ifpte21.com](mailto:ecassidy@ifpte21.com); [WendyWong26@yahoo.com](mailto:WendyWong26@yahoo.com); [wendywong26@yahoo.com](mailto:wendywong26@yahoo.com); [tmathews@ifpte21.org](mailto:tmathews@ifpte21.org); [kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org); [kpage@ifpte21.org](mailto:kpage@ifpte21.org); [eerbach@ifpte21.org](mailto:eerbach@ifpte21.org); [l21pscreview@ifpte21.org](mailto:l21pscreview@ifpte21.org); Sung Kim (AIR) <[sung.kim@flysfo.com](mailto:sung.kim@flysfo.com)>; DHR-PSCCoordinator, DHR (HRD) <[dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)>

Subject: Receipt of Modification Request to PSC # 47246 - 18/19 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The AIRPORT COMMISSION -- AIR has submitted a modification request for a Personal Services Contract (PSC) for \$20,000,000 for services for the period July 1, 2019 – June 30, 2024. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/16381>

Email sent to the following addresses: [L21PSCReview@ifpte21.org](mailto:L21PSCReview@ifpte21.org) [eerbach@ifpte21.org](mailto:eerbach@ifpte21.org) [kpage@ifpte21.org](mailto:kpage@ifpte21.org) [kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org) [tmathews@ifpte21.org](mailto:tmathews@ifpte21.org) [wendywong26@yahoo.com](mailto:wendywong26@yahoo.com) [WendyWong26@yahoo.com](mailto:WendyWong26@yahoo.com) [ecassidy@ifpte21.com](mailto:ecassidy@ifpte21.com) [ewallace@ifpte21.org](mailto:ewallace@ifpte21.org) [oashworth@ibew6.org](mailto:oashworth@ibew6.org) [grojo@local39.org](mailto:grojo@local39.org) [MRainsford@Local39.org](mailto:MRainsford@Local39.org) [seichenberger@local39.org](mailto:seichenberger@local39.org)

# **Additional Attachment(s)**

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSIONDept. Code: AIRType of Request:  Initial  Modification of an existing PSC (PSC # 47246 - 18/19)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: Elevator, Escalator, and Electric Walk Maintenance and Repair at SFIAFunding Source: Airport Operating FundsPSC Original Approved Amount: \$40,000,000 PSC Original Approved Duration: 07/01/19 - 06/30/24 (5 years 1 day)PSC Mod#1 Amount: \$20,000,000 PSC Mod#1 Duration: no duration addedPSC Cumulative Amount Proposed: \$60,000,000 PSC Cumulative Duration Proposed: 5 years 1 day**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Contractor shall be responsible for the maintenance, repair, inspection, testing, repair and/or replacement of parts and components, and emergency call-back work for approximately 240 elevators, 138 escalators, and 43 electric walks at the Airport including the terminals, boarding areas, parking garages, and other field buildings.

**B. Explain why this service is necessary and the consequence of denial:**

These services are needed because the City does not have staff with the expertise to maintain this equipment 24 hours per day and 7 days per week. This equipment must be adequately maintained and kept in good repair in order to function properly and meet State permitting requirements. Denial of service will adversely impact the Airport's ability to safely transport customers, tenants, and employees at San Francisco International Airport with their equipment and supplies, as well as the Airport's ability to comply with certain operating and building codes.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

Services have been provided in the past through earlier PSC request. See 47246 - 18/19

**D. Will the contract(s) be renewed?**

Yes, if there is a continued need for this service.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

PSC duration to match contract term and cover potential option period.

**2. Reason(s) for the Request****A. Display all that apply**

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

Current City classifications lack the required license, specialized skills, and equipment needed to perform this work.

B. Reason for the request for modification:

Additional PSC amount for contract modifications

### **3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Contractor must possess a current and active California Contractor's "C-11" license and have specialized experience in elevator, escalator, and electric walk maintenance and repair.
- B. Which, if any, civil service class(es) normally perform(s) this work? 7205, Chief Stationary Engineer; 7333, Apprentice Stationary Engineer; 7334, Stationary Engineer; 7335, Senior Stationary Engineer; 9354, Elevator and Crane Technician;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. Contractor will be responsible for providing all necessary tools and equipment, including specialized diagnostic equipment required to maintain safe and reliable elevator, escalator, and electric walk operation. This is to be done in accordance with the latest adopted editions of the American Society of Mechanical Engineers (ASME) Standards A17.1 – Safety Code for Elevators and Escalators, A17.2 – Inspector's Guide for Elevators and Escalators, and A17.3 Safety Code for Existing Elevators and Escalators.

### **4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

### **5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The Airport's mechanical maintenance staff will supervise the contracted work, however, the existing classifications do not have the required contractor's license, expertise and specialized skills related to the maintenance of these systems.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would not be practical to adopt a new civil service class solely for the performance of this work at the Airport.

### **6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

The contractor will not train City and County employees as this is specialized work to be performed by qualified, licensed workers only.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 04/26/21, the Department notified the following employee organizations of this PSC/RFP request:  
Stationary Engineers, Local 39; Electrical Workers, Local 6; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: PO Box 8097, San Francisco, CA 94128

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47246 - 18/19

DHR Analysis/Recommendation:  
 Commission Approval Not Required  
 Approved by DHR on 05/04/2021

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Elevator, Escalator, and Electric Walk Maintenance and Repair at SFIA

Funding Source: Airport Operating Funds

PSC Amount: \$40,000,000

PSC Est. Start Date: 07/01/2019

PSC Est. End Date 06/30/2024

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

Contractor shall be responsible for the maintenance, repair, inspection, testing, repair and/or replacement of parts and components, and emergency call-back work for approximately 240 elevators, 138 escalators, and 43 electric walks at the Airport including the terminals, boarding areas, parking garages, and other field buildings.

**B. Explain why this service is necessary and the consequence of denial:**

These services are needed because the City does not have staff with the expertise to maintain this equipment 24 hours per day and 7 days per week. This equipment must be adequately maintained and kept in good repair in order to function properly and meet State permitting requirements. Denial of service will adversely impact the Airport's ability to safely transport customers, tenants, and employees at San Francisco International Airport with their equipment and supplies, as well as the Airport's ability to comply with certain operating and building codes.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

This service was performed in the past under previous maintenance contracts. The most recent PSC approval is 4013 – 13/14.

**D. Will the contract(s) be renewed?**

Yes, if there is a continued need for this service.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**

PSC duration to match contract term and cover potential option period.

**2. Reason(s) for the Request**

**A. Indicate all that apply (be specific and attach any relevant supporting documents):**

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

**B. Explain the qualifying circumstances:**

Current City classifications lack the required license, specialized skills, and equipment needed to perform this work.

**3. Description of Required Skills/Expertise**

**A. Specify required skills and/or expertise:** Contractor must possess a current and active California Contractor's "C-11" license and have specialized experience in elevator, escalator, and electric walk maintenance and repair.



- B. Which, if any, civil service class(es) normally perform(s) this work? 7205, Chief Stationary Engineer; 7333, Apprentice Stationary Engineer; 7334, Stationary Engineer; 7335, Senior Stationary Engineer; 9354, Elevator and Crane Technician;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. Contractor will be responsible for providing all necessary tools and equipment, including specialized diagnostic equipment required to maintain safe and reliable elevator, escalator, and electric walk operation. This is to be done in accordance with the latest adopted editions of the American Society of Mechanical Engineers (ASME) Standards A17.1 – Safety Code for Elevators and Escalators, A17.2 – Inspector’s Guide for Elevators and Escalators, and A17.3 Safety Code for Existing Elevators and Escalators.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

There are currently no available resources within the City that can provide the comprehensive and campus-wide maintenance and repair services required by the Airport.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The Airport’s mechanical maintenance staff will supervise the contracted work, however, the existing classifications do not have the required contractor’s license, expertise and specialized skills related to the maintenance of these systems.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class solely for the performance of this work at the Airport.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. The contractor will not train City and County employees as this is specialized work to be performed by qualified, licensed workers only.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 02/12/2019, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21; Electrical Workers, Local 6; Stationary Engineers, Local 39

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfso.com

Address: PO Box 8097 San Francisco, CA 94128

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47246 - 18/19

DHR Analysis/Recommendation:

action date: 04/15/2019

Commission Approval Required

Approved by Civil Service Commission

04/15/2019 DHR Approved for 04/15/2019

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: ECONOMIC AND WORKFORCE DEVELOPMENT

Dept. Code: ECN

Type of Request:  Initial  Modification of an existing PSC (PSC # 36583 - 15/16)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Web based software development, maintenance, and reporting consultant

Funding Source: Federal Funds and General Fund

PSC Original Approved Amount: \$100,000 PSC Original Approved Duration: 07/20/15 - 07/19/16 (1 year)

PSC Mod#1 Amount: \$475,000 PSC Mod#1 Duration: 02/15/16-06/30/20 (3 years 49 weeks)

PSC Mod#2 Amount: \$375,000 PSC Mod#2 Duration: 07/01/20-06/30/22 (2 years)

PSC Mod#3 Amount: \$474,000 PSC Mod#3 Duration: no duration added

PSC Mod#4 Amount: \$344,000 PSC Mod#4 Duration: 07/01/22-06/30/23 (1 year)

PSC Mod#5 Amount: \$630,000 PSC Mod#5 Duration: 07/01/23-06/30/25 (2 years 1 day)

PSC Cumulative Amount Proposed: \$2,398,000 PSC Cumulative Duration Proposed: 9 years 49 weeks

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The consultant will assist the Office of Economic and Workforce Development (OEWD) with designing, implementing, and transitioning the existing online Workforce Central (WFC) client tracking and performance management platform to integrate new federal Workforce Innovation and Opportunities Act (WIOA) provisions.

**Scope Change**

In response to new reporting requirements and client tracking needs, this modification will support a database for Small Business as well as Workforce programming.

B. Explain why this service is necessary and the consequence of denial:

The new federal Workforce Innovation and Opportunities Act (WIOA) provisions took effect on July 1, 2015, and the OEWD has been working diligently with our grantees over the past year to prepare for implementation. These changes are largely programmatic in nature, including major shifts to the way that clients are categorized and tracked. While grantees have anticipated the changes to their program design and service delivery models, these changes have yet to be fully incorporated into the online tracking system. Over the next year, adjustments will need to be made to the Workforce Central (WFC) system to ensure that grantees can continue to meet their performance goals, improve monitoring outcomes, and securely track and share client information. Additionally, the OEWD continues to apply to new sources of federal revenue and needs to ensure that the WFC system can be flexible to changing federal funding requirements.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, continuation of existing programming

D. Will the contract(s) be renewed?

Unknown at this time.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The services provided through this contract are not currently available within the City. This online business tool ensures department compliance with Federal grant requirements, and supports system upgrades and customizations in response to new reporting requirements and client tracking needs.

**2. Reason(s) for the Request**

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

This is a short-term, transitional project that will require specific technical skills not currently available in the department or DTIS.

B. Reason for the request for modification:

This requests adds \$630,000 and two years to the authorization to continue providing critical support to the department's essential client tracking database systems.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Software development, query building, project management, maintenance of software specific to grant and performance management for workforce programs. Requires familiarity with social service programs and web-based applications in an extra-net environment.

B. Which, if any, civil service class(es) normally perform(s) this work? 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: They will "host" the application on their servers, which will be customized to the needs of the OEWD. We are contracting for professional services and will pay a minimal maintenance fee for nightly back ups of data.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

We do not currently have this series of classifications in our department. DTIS stated that this project is not within their typical scope of work, and other City agencies that we have approached have contracted this work out to professional services vendors.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No - we will select a vendor that has specific expertise in developing performance management and grant management software. Developing such expertise is not core to our department's work.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation. No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not. Employees will be trained on the changes to the software and learn how to create reports using data from the platform. Those employees will also learn how to train grantees to use the platform. Current

employees are two (2) 1823s and one (1) 9775. Time required for training will depend on the final contract specifications.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes - this extension is a continuation of existing work.

**7. Union Notification:** On 03/10/23, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jenny Collins Phone: 415-701-4842 Email: Jenny.Collins@sfgov.org

Address: 1 South Van Ness Ave, 5th Floor, San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 36583 - 15/16

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

## Receipt of Modification Request to PSC # 36583 - 15/16 - MODIFICATIONS

dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org>

on behalf of

Jenny.Collins@sfgov.org <jenny.collins@sfgov.org>

Fri 3/10/2023 4:54 PM

To: Collins, Jenny (ECN) <jenny.collins@sfgov.org>;Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>;ewallace@ifpte21.org <ewallace@ifpte21.org>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;tmathews@ifpte21.org <tmathews@ifpte21.org>;kschumacher@ifpte21.org <kschumacher@ifpte21.org>;amakayan@ifpte21.org <amakayan@ifpte21.org>;l21pscreview@ifpte21.org <l21pscreview@ifpte21.org>;Bloom, Marissa (ECN) <marissa.bloom@sfgov.org>;DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>

PSC RECEIPT of Modification notification sent to Unions and DHR

The ECONOMIC AND WORKFORCE DEVELOPMENT -- ECN has submitted a modification request for a Personal Services Contract (PSC) for \$630,000 for services for the period July 1, 2023 – June 30, 2025. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrDrupal/node/6292>

Email sent to the following addresses: L21PSCReview@ifpte21.org  
amakayan@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org  
wendywong26@yahoo.com WendyWong26@yahoo.com ewallace@ifpte21.org  
junko.laxamana@sfgov.org

# **Additional Attachment(s)**



## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: ECONOMIC AND WORKFORCE DEVELOPMENTDept. Code: ECNType of Request:  Initial  Modification of an existing PSC (PSC # 36583 - 15/16)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: Web based software development, maintenance, and reporting consultantFunding Source: Federal Funds and General FundPSC Original Approved Amount: \$100,000PSC Original Approved Duration: 07/20/15 - 07/19/16 (1 year)PSC Mod#1 Amount: \$475,000PSC Mod#1 Duration: 02/15/16-06/30/20 (3 years 49 weeks)PSC Mod#2 Amount: \$375,000PSC Mod#2 Duration: 07/01/20-06/30/22 (2 years)PSC Mod#3 Amount: \$474,000PSC Mod#3 Duration: no duration addedPSC Mod#4 Amount: \$344,000PSC Mod#4 Duration: 07/01/22-06/30/23 (1 year)PSC Cumulative Amount Proposed: \$1,768,000PSC Cumulative Duration Proposed: 7 years 49 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

The consultant will assist the Office of Economic and Workforce Development (OEWD) with designing, implementing, and transitioning the existing online Workforce Central (WFC) client tracking and performance management platform to integrate new federal Workforce Innovation and Opportunities Act (WIOA) provisions.

**B. Explain why this service is necessary and the consequence of denial:**

The new federal Workforce Innovation and Opportunities Act (WIOA) provisions took effect on July 1, 2015, and the OEWD has been working diligently with our grantees over the past year to prepare for implementation. These changes are largely programmatic in nature, including major shifts to the way that clients are categorized and tracked. While grantees have anticipated the changes to their program design and service delivery models, these changes have yet to be fully incorporated into the online tracking system. Over the next year, adjustments will need to be made to the Workforce Central (WFC) system to ensure that grantees can continue to meet their performance goals, improve monitoring outcomes, and securely track and share client information. Additionally, the OEWD continues to apply to new sources of federal revenue and needs to ensure that the WFC system can be flexible to changing federal funding requirements.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**  
yes, this extends an existing authorization**D. Will the contract(s) be renewed?**  
Unknown at this time.

- E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:  
The services provided through this contract are not currently available within the City. The Department still anticipates the need for this online business tool through at least June 2023 to ensure compliance with Federal grant requirements.

## 2. **Reason(s) for the Request**

- A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

This is a short-term, transitional project that will require specific technical skills not currently available in the department or DTIS.

- B. Reason for the request for modification:

This request adds \$343,850 and one year to the authorization to provide ongoing critical support to the department's essential work in tracking client services.

## 3. **Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Software development, query building, project management, maintenance of software specific to grant and performance management for workforce programs. Requires familiarity with social service programs and web-based applications in an extra-net environment.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: They will "host" the application on their servers, which will be customized to the needs of the OEWD. We are contracting for professional services and will pay a minimal maintenance fee for nightly back ups of data.

## 4. **If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

## 5. **Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
We do not currently have this series of classifications in our department. DTIS stated that this project is not within their typical scope of work, and other City agencies that we have approached have contracted this work out to professional services vendors.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No - we will select a vendor that has specific expertise in developing performance management and grant management software. Developing such expertise is not core to our department's work.

## 6. **Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Employees will be trained on the changes to the software and learn how to create reports using data from the platform. Those employees will also learn how to train grantees to use the platform. Current employees are two (2) 1823s and one (1) 9775. Time required for training will depend on the final contract specifications.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes - this extension is a continuation of existing work.

**7. Union Notification:** On 08/23/21, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jenny Collins Phone: 415-701-4842 Email: Jenny.Collins@sfgov.org

Address: 1 South Van Ness Ave, 5th Floor, San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 36583 - 15/16

DHR Analysis/Recommendation:

10/04/2021

Commission Approval Required

Approved by Civil Service Commission

10/04/2021 DHR Approved for 10/04/2021

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # 42573 - 19/20)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Software for Policy and Procedure Management

Funding Source: General Fund

PSC Original Approved Amount: \$300,000 PSC Original Approved Duration: 07/01/20 - 06/30/22 (1 year 52 weeks)

PSC Mod#1 Amount: \$200,000 PSC Mod#1 Duration: 03/22/21-06/30/26 (4 years 1 day)

PSC Mod#2 Amount: no amount added PSC Mod#2 Duration: 09/30/22-12/31/27 (1 year 26 weeks)

PSC Mod#3 Amount: \$500,000 PSC Mod#3 Duration: 05/16/23-12/31/30 (3 years 1 day)

PSC Cumulative Amount Proposed: \$1,000,000 PSC Cumulative Duration Proposed: 10 years 26 weeks

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Contractor will provide cloud-based software for management of Department policies and procedures, including licensing and maintenance. The Department of Public Health (DPH) currently manages the multiplicity of its policies and procedures with a rudimentary system using MS Office applications (Word, Excel) which can be unwieldy and difficult to coordinate and manage. Reviewing and keeping policies and procedures current is required by federal regulators, the Centers for Medicare and Medicaid Services (CMS). DPH intends to purchase proprietary software (licensing and maintenance) to modernize and enable its policies and procedures tracking system to be more responsive to operational and regularly needs, and to ensure review of and alignment with evolving laws, guidelines, regulations, standards, and best practices. ,

B. Explain why this service is necessary and the consequence of denial:

Denial will result in less efficiency in policy and procedure management and failure to comply fully with CMS regulations, while also negatively affecting the ability of DPH staff to stay up to date and comply with current policies and procedures, and ultimately lessening the effectiveness of health care services delivery.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 42573 - 19/20

D. Will the contract(s) be renewed?

Yes, if funding is available.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Services are expected to be needed on an ongoing basis.

**2. Reason(s) for the Request**

A. Display all that apply

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

City lacks the resources to design and implement a software solution for policy and procedure management.

B. Reason for the request for modification:

Funds are being added and end date is being extended in anticipation of these services being needed on an ongoing basis.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Thorough knowledge of CMS regulations pertaining to policies and procedures, and the ability to apply it effectively to the needed systems; ability to analyze procedures appropriately in order to optimize development of administrative, management, program and organizational policies and procedures; ability to analyze existing policies, procedures and work practices; ability to analyze the effect of proposed and existing legislation, regulations and law on organizational policies and procedures; ability to compile information and documentation in preparation for producing reports and/or drafts reports for management/administration.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1823, Senior Administrative Analyst; 2593, Health Program Coordinator 3;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractor will provide proprietary software specifically designed for this purpose, including the expertise necessary to employ the software effectively and to advise the Department on the best ways to transition from current systems to the new software.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
This is advanced software and technology that Department does not have capability or bandwidth to build and support.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would be impractical to utilize Department staff to develop cloud software with the capability to of running audit-ready reports.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
There will be no formal training of DPH staff, however, there will be set-up assistance and support from the Contractor that is appropriate to the software.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification: On 03/17/23, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, Local 21;**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 1380 Howard Street, 4th Floor, San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 42573 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

Receipt of Modification Request to PSC # 42573 - 19/20 - MODIFICATIONS

dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org>

on behalf of

kelly.hiramoto@SFDPH.org <kelly.hiramoto@sfdph.org>

Fri 3/17/2023 5:11 PM

To: Hiramoto, Kelly (DPH) <kelly.hiramoto@sfdph.org>;ewallace@ifpte21.org <ewallace@ifpte21.org>;Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;tmathews@ifpte21.org <tmathews@ifpte21.org>;kschumacher@ifpte21.org <kschumacher@ifpte21.org>;l21pscreview@ifpte21.org <l21pscreview@ifpte21.org>;Rossi, Ron (DPH) <ron.rossi@sfdph.org>;DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC HEALTH -- DPH has submitted a modification request for a Personal Services Contract (PSC) for \$500,000 for services for the period May 16, 2023 – December 31, 2030. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/16226>

Email sent to the following addresses: L21PSCReview@ifpte21.org  
kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com  
WendyWong26@yahoo.com junko.laxamana@sfgov.org ewallace@ifpte21.org



# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # 42573 - 19/20)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Software for Policy and Procedure Management

Funding Source: General Fund

PSC Original Approved Amount: \$300,000 PSC Original Approved Duration: 07/01/20 - 06/30/22 (1 year 52 weeks)

PSC Mod#1 Amount: \$200,000 PSC Mod#1 Duration: 03/22/21-06/30/26 (4 years 1 day)

PSC Mod#2 Amount: no amount added PSC Mod#2 Duration: 09/30/22-12/31/27 (1 year 26 weeks)

PSC Cumulative Amount Proposed: \$500,000 PSC Cumulative Duration Proposed: 7 years 26 weeks

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

Contractor will provide cloud-based software for management of Department policies and procedures, including licensing and maintenance. The Department of Public Health (DPH) currently manages the multiplicity of its policies and procedures with a rudimentary system using MS Office applications (Word, Excel) which can be unwieldy and difficult to coordinate and manage. Reviewing and keeping policies and procedures current is required by federal regulators, the Centers for Medicare and Medicaid Services (CMS). DPH intends to purchase proprietary software (licensing and maintenance) to modernize and enable its policies and procedures tracking system to be more responsive to operational and regularly needs, and to ensure review of and alignment with evolving laws, guidelines, regulations, standards, and best practices. ,

**B. Explain why this service is necessary and the consequence of denial:**

Denial will result in less efficiency in policy and procedure management and failure to comply fully with CMS regulations, while also negatively affecting the ability of DPH staff to stay up to date and comply with current policies and procedures, and ultimately lessening the effectiveness of health care services delivery.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

Services have been provided in the past through earlier PSC request. See 42573 - 19/20

**D. Will the contract(s) be renewed?**

Yes, if funding is available.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

Services are expected to be needed on an ongoing basis.

**2. Reason(s) for the Request**

**A. Display all that apply**

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

City lacks the resources to design and implement a software solution for policy and procedure management.

**B. Reason for the request for modification:**

End date is being extended in anticipation of these services being needed on an ongoing basis.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Thorough knowledge of CMS regulations pertaining to policies and procedures, and the ability to apply it effectively to the needed systems; ability to analyze procedures appropriately in order to optimize development of administrative, management, program and organizational policies and procedures; ability to analyze existing policies, procedures and work practices; ability to analyze the effect of proposed and existing legislation, regulations and law on organizational policies and procedures; ability to compile information and documentation in preparation for producing reports and/or drafts reports for management/administration.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1823, Senior Administrative Analyst; 2593, Health Program Coordinator 3;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractor will provide proprietary software specifically designed for this purpose, including the expertise necessary to employ the software effectively and to advise the Department on the best ways to transition from current systems to the new software.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
This is advanced software and technology that Department does not have capability or bandwidth to build and support.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would be impractical to utilize Department staff to develop cloud software with the capability to of running audit-ready reports.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
There will be no formal training of DPH staff, however, there will be set-up assistance and support from the Contractor that is appropriate to the software.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 09/30/22, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 1380 Howard Street, 4th Floor, San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 42573 - 19/20

DHR Analysis/Recommendation:

11/07/2022

Commission Approval Required

Approved by Civil Service Commission

11/07/2022 DHR Approved for 11/07/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # 48034 - 21/22)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Specialized Medical Record Coding Software & Support Services

Funding Source: General Funds & Hospital Funds

PSC Original Approved Amount: \$5,000,000 PSC Original Approved Duration: 03/01/22 - 12/31/28 (6 years 43 weeks)

PSC Mod#1 Amount: \$2,408,988 PSC Mod#1 Duration: 11/30/22-12/31/30 (2 years)

PSC Mod#2 Amount: \$1,591,012 PSC Mod#2 Duration: no duration added

PSC Cumulative Amount Proposed: \$9,000,000 PSC Cumulative Duration Proposed: 8 years 43 weeks

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide encoder software for use in the San Francisco Department of Public Health Epic electronic health record and standalone use. The contractor will perform Health Information Management (HIM) coding of inpatient and outpatient procedural coding including, Medicare Severity-Diagnosis Related Groups (MS-DRG) and All Patients Refined-Diagnosis Related Groups (APR -DRG) reimbursement formulary, Ambulatory Payment Classification (APC) core grouping calculations and other payer formulary calculations, and clinical documentation integrity (CDI). The software also supports standard and customer user defined reporting. The value of this request covers estimated costs for licensing, maintenance, and related professional services such as training and consultation.

B. Explain why this service is necessary and the consequence of denial:

The coding provides an increased granularity on patient characteristics that provide better predictive model for resource use and outcomes. It also allows patients information to accurately reflect in billing, research, and quality measure of services. These services are necessary in order to maintain existing legacy applications and to provide enhancements as needed to such systems in order to maintain their effectiveness and achieve full functionality. The Department has established both clinical and operational workflows around these systems, and denial of this request would result in inefficiencies and impaired response capacity, lessening the quality of services provided.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48034 - 21/22

D. Will the contract(s) be renewed?

Yes.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The PSC request is in excess of five years because it is not feasible for the City to create, and maintain a medical encoder / grouper application in-house. Companies specialize in this type of software and have already developed and have all the resources to maintain and have an up-to-date system available for sale to the general public. The system must also be updated as required in order to be in compliance with all regulatory changes that may be present in the industry.

**2. Reason(s) for the Request**

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload): The Contractor will provide resources to support and maintain a web based application that meets all current regulatory requirements. Services are provided across all customers of a contractor and are not generally or typically not dedicated to a specific customer. Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator): Contracted to provide a full hosted (Web-based) application, the contractor will provide a secure, high availability hosting solution for the required application.

B. Reason for the request for modification:

This modification adds an additional amount of spending authority to accommodate the final estimated amount for the application and overall project cost after contract negotiations. There is no change to the scope.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Contractor(s) must have a commercially available product in the relevant field, and sufficient resources to provide implementation and development services and ongoing support, including guarantees that the application meets minimum performance standards.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1022, IS Administrator 2; 1023, IS Administrator 3; 1024, IS Administrator-Supervisor; 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1062, IS Programmer Analyst; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal; 1070, IS Project Director; 1091, IT Operations Support Admin I; 1092, IT Operations Support Admin II; 1093, IT Operations Support Admin III; 1094, IT Operations Support Admin IV; 1095, IT Operations Support Admin V; 5502, Project Manager 1; 5504, Project Manager 2; 1091, IT Operations Support Administrator I; 1092, IT Operations Support Administrator II; 1093, IT Operations Support Administrator III ; 1094, IT Operations Support Administrator IV ; 1094, IT Operations Support Administrator IV ; 1095, IT Operations Support Administrator V;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contracted to provide a full hosted (Web-based) application, the contractor will provide a secure, high availability hosting solution for the required application.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Civil Service classes are not applicable because these are proprietary products requiring services which include technical components beyond the scope of expertise of in-house staff to develop within quality parameters. Civil service staff will provide connectivity to the application and monitor connectivity issues at both the desktop and network levels.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: The services deal with proprietary products that are already developed and available for commercial use. Civil service staff will work with contractor(s) to obtain knowledge necessary for day-to-day use and upkeep of applications. Staff will also have the ongoing opportunity to gain insight and knowledge of current best practices for public health data system applications through their interactions with contractor and their product.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Specific training in the use and operation of specific software solutions and business process improvements will be provided if the project requires such training. City staff will have the opportunity to learn industry best practices in a given field and the use of new applications. Employees who may receive training would be varied depending on the specific project, and could include the IS Engineer series 1042, 1043, 1052, 1053, and 1054; Medical Records Clerk

2210;Project Managers series 5502, 5504, 5506, and 5508; Administrative Analyst 1824; and Manager classifications 0923 and 0931.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 03/13/23, the Department notified the following employee organizations of this PSC/RFP request: Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 1380 Howard St., San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48034 - 21/22

DHR Analysis/Recommendation:  
Commission Approval Required  
DHR Approved for 04/17/2023

Civil Service Commission Action:

# **Receipt of Union Notification(s)**



**Receipt of Modification Request to PSC # 48034 - 21/22 - MODIFICATIONS**

dhr-psccoordinator@sfgov.org <dhr-psccoordinator@sfgov.org>

on behalf of

kelly.hiramoto@sfdph.org <kelly.hiramoto@sfdph.org>

Mon 3/13/2023 10:34 AM

To: Hiramoto, Kelly (DPH) <kelly.hiramoto@sfdph.org>;Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>;amakayan@ifpte21.org <amakayan@ifpte21.org>;ewallace@ifpte21.org <ewallace@ifpte21.org>;ecassidy@ifpte21.com <ecassidy@ifpte21.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;tmathews@ifpte21.org <tmathews@ifpte21.org>;kschumacher@ifpte21.org <kschumacher@ifpte21.org>;kpage@ifpte21.org <kpage@ifpte21.org>;eerbach@ifpte21.org <eerbach@ifpte21.org>;l21pscreview@ifpte21.org <l21pscreview@ifpte21.org>;Longhitano, Robert (DPH) <robert.longhitano@sfdph.org>;DHR-PSCCoordinator, DHR (HRD) <dhr-psccoordinator@sfgov.org>

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC HEALTH -- DPH has submitted a modification request for a Personal Services Contract (PSC) for \$1,591,012 for services for the period April 18, 2023 – December 31, 2030. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/19455>

Email sent to the following addresses: L21PSCReview@ifpte21.org  
eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org  
tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com  
ecassidy@ifpte21.com ewallace@ifpte21.org amakayan@ifpte21.org  
junko.laxamana@sfgov.org

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # 48034 - 21/22)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Specialized Medical Record Coding Software & Support Services

Funding Source: General Funds & Hospital Funds

PSC Original Approved Amount: \$5,000,000 PSC Original Approved Duration: 03/01/22 - 12/31/28 (6 years 43 weeks)

PSC Mod#1 Amount: \$2,408,988 PSC Mod#1 Duration: 11/30/22-12/31/30 (2 years)

PSC Cumulative Amount Proposed: \$7,408,988 PSC Cumulative Duration Proposed: 8 years 43 weeks

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

The contractor(s) will provide encoder software for use in the San Francisco Department of Public Health Epic electronic health record and standalone use. The contractor will perform Health Information Management (HIM) coding of inpatient and outpatient procedural coding including, Medicare Severity-Diagnosis Related Groups (MS-DRG) and All Patients Refined-Diagnosis Related Groups (APR -DRG) reimbursement formulary, Ambulatory Payment Classification (APC) core grouping calculations and other payer formulary calculations, and clinical documentation integrity (CDI). The software also supports standard and customer user defined reporting. The value of this request covers estimated costs for licensing, maintenance, and related professional services such as training and consultation.

**B. Explain why this service is necessary and the consequence of denial:**

The coding provides an increased granularity on patient characteristics that provide better predictive model for resource use and outcomes. It also allows patients information to accurately reflect in billing, research, and quality measure of services. These services are necessary in order to maintain existing legacy applications and to provide enhancements as needed to such systems in order to maintain their effectiveness and achieve full functionality. The Department has established both clinical and operational workflows around these systems, and denial of this request would result in inefficiencies and impaired response capacity, lessening the quality of services provided.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

Services have been provided in the past through earlier PSC request. See 48034 - 21/22

**D. Will the contract(s) be renewed?**

Yes.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

The PSC request is five years because it is not feasible for the City to create, and maintain a medical encoder / grouper application in-house. Companies specialize in this type of software and have already developed and have all the resources to maintain and have an up-to-date system available for sale to the general public. The system must also be updated as required in order to be in compliance with all regulatory changes that may be present in the industry.

**2. Reason(s) for the Request**

**A. Display all that apply**

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload): The Contractor will provide resources to support and maintain a web based application that meets all current regulatory requirements. Services are provided across all customers of a contractor and are not generally or typically not dedicated to a specific customer. Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator): Contracted to provide a full hosted (Web-based) application, the contractor will provide a secure, high availability hosting solution for the required application.

**B. Reason for the request for modification:**

This requested modification will account for additional as-needed products and services for the proposed application. In addition, the term of the PSC will need to be extended to account for prolonged contract negotiations which are still ongoing.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Contractor(s) must have a commercially available product in the relevant field, and sufficient resources to provide implementation and development services and ongoing support, including guarantees that the application meets minimum performance standards.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1022, IS Administrator 2; 1023, IS Administrator 3; 1024, IS Administrator-Supervisor; 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1062, IS Programmer Analyst; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal; 1070, IS Project Director; 1091, IT Operations Support Admin I; 1092, IT Operations Support Admin II; 1093, IT Operations Support Admin III; 1094, IT Operations Support Admin IV; 1095, IT Operations Support Admin V; 5502, Project Manager 1; 5504, Project Manager 2; 1091, IT Operations Support Administrator I; 1092, IT Operations Support Administrator II; 1093, IT Operations Support Administrator III ; 1094, IT Operations Support Administrator IV ; 1095, IT Operations Support Administrator V;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contracted to provide a full hosted (Web-based) application, the contractor will provide a secure, high availability hosting solution for the required application.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Civil Service classes are not applicable because these are proprietary products requiring services which include technical components beyond the scope of expertise of in-house staff to develop within quality parameters. Civil service staff will provide connectivity to the application and monitor connectivity issues at both the desktop and network levels.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: The services deal with proprietary products that are already developed and available for commercial use. Civil service staff will work with contractor(s) to obtain knowledge necessary for day-to-day use and upkeep of applications. Staff will also have the ongoing opportunity to gain insight and knowledge of current best practices for public health data system applications through their interactions with contractor and their product.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Specific training in the use and operation of specific software solutions and business process improvements will be provided if the project requires such training. City staff will have the opportunity to learn industry best practices in a given field and the use of new applications. Employees who may receive training would be varied depending on the specific project, and could include the IS Engineer series 1042, 1043, 1052, 1053, and 1054; Medical Records Clerk

2210;Project Managers series 5502, 5504, 5506, and 5508; Administrative Analyst 1824; and Manager classifications 0923 and 0931.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 11/22/22, the Department notified the following employee organizations of this PSC/RFP request: Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 1380 Howard St., San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48034 - 21/22

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 11/30/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH -- DPH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Specialized Medical Record Coding Software & Support Services

Funding Source: General Funds & Hospital Funds

PSC Duration: 6 years 43 weeks

PSC Amount: \$5,000,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide encoder software for use in the San Francisco Department of Public Health Epic electronic health record and standalone use. The contractor will perform Health Information Management (HIM) coding of inpatient and outpatient procedural coding including, Medicare Severity-Diagnosis Related Groups (MS-DRG) and All Patients Refined-Diagnosis Related Groups (APR -DRG) reimbursement formulary, Ambulatory Payment Classification (APC) core grouping calculations and other payer formulary calculations, and clinical documentation integrity (CDI). The software also supports standard and customer user defined reporting. The value of this request covers estimated costs for licensing, maintenance, and related professional services such as training and consultation.

B. Explain why this service is necessary and the consequence of denial:

The coding provides an increased granularity on patient characteristics that provide better predictive model for resource use and outcomes. It also allows patients information to accurately reflect in billing, research, and quality measure of services. These services are necessary in order to maintain existing legacy applications and to provide enhancements as needed to such systems in order to maintain their effectiveness and achieve full functionality. The Department has established both clinical and operational workflows around these systems, and denial of this request would result in inefficiencies and impaired response capacity, lessening the quality of services provided.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The current product is provided under a legacy system. Prior service approvals for the product are under PSC # 42995-13/14 and PSC # 41698-19/20

D. Will the contract(s) be renewed?

Yes.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The PSC request is five years because it is not feasible for the City to create, and maintain a medical encoder / grouper application in-house. Companies specialize in this type of software and have already developed and have all the resources to maintain and have an up-to-date system available for sale to the general public. The system must also be updated as required in order to be in compliance with all regulatory changes that may be present in the industry.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload): The Contractor will provide resources to support and maintain a web based application that meets all current regulatory requirements. Services are provided across all customers of a contractor and are not generally or typically not dedicated to a specific customer. Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator): Contracted to provide a full hosted (Web-based) application, the contractor will provide a secure, high availability hosting solution for the required application.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Contractor(s) must have a commercially available product in the relevant field, and sufficient resources to provide implementation and development services and ongoing support, including guarantees that the application meets minimum performance standards.

B. Which, if any, civil service class(es) normally perform(s) this work? 1022, IS Administrator 2; 1023, IS Administrator 3; 1024, IS Administrator-Supervisor; 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1062, IS Programmer Analyst; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal; 1070, IS Project Director; 1091, IT Operations Support Admin I; 1092, IT Operations Support Admin II; 1093, IT Operations Support Admn III; 1094, IT Operations Support Admin IV; 1095, IT Operations Support Admin V; 5502, Project Manager 1; 5504, Project Manager 2; 1091, IT Operations Support Administrator I; 1092, IT Operations Support Administrator II; 1093, IT Operations Support Administrator III ; 1094, IT Operations Support Administrator IV ; 1094, IT Operations Support Administrator IV ; 1095, IT Operations Support Administrator V;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contracted to provide a full hosted (Web-based) application, the contractor will provide a secure, high availability hosting solution for the required application.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Civil Service classes are not applicable because these are proprietary products requiring services which include technical components beyond the scope of expertise of in-house staff to develop within quality parameters. Civil service staff will provide connectivity to the application and monitor connectivity issues at both the desktop and network levels.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. The services deal with proprietary products that are already developed and available for commercial use. Civil service staff will work with contractor(s) to obtain knowledge necessary for day-to-day use and upkeep of applications. Staff will also have the ongoing opportunity to gain insight and knowledge of current best practices for public health data system applications through their interactions with contractor and their product.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. Specific training in the use and operation of specific software solutions and business process improvements will be provided if the project requires such training. City staff will have the opportunity to learn industry best practices in a given field and the use of new applications. Employees who may receive training would be varied depending on the specific project, and could include the IS Engineer series 1042, 1043, 1052, 1053, and 1054; Medical Records Clerk 2210; Project Managers series 5502, 5504, 5506, and 5508; Administrative Analyst 1824; and Manager classifications 0923 and 0931.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 12/20/2021, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21; Management & Superv Local 21; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21; Professional & Tech Engrs, SFAPP

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 1380 Howard St. San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48034 - 21/22

DHR Analysis/Recommendation:

action date: 03/07/2022

Commission Approval Required

Approved by Civil Service Commission

03/07/2022 DHR Approved for 03/07/2022



PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # 48890 - 18/19)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Software solution for Incident and grievance response system

Funding Source: General Fund

PSC Original Approved Amount: \$600,000 PSC Original Approved Duration: 10/01/19 - 09/30/25 (6 years 1 day).

PSC Mod#1 Amount: \$299,000 PSC Mod#1 Duration: no duration added

PSC Mod#2 Amount: \$650,000 PSC Mod#2 Duration: 05/16/22-12/31/30 (5 years 13 weeks)

PSC Cumulative Amount Proposed: \$1,549,000 PSC Cumulative Duration Proposed: 11 years 13 weeks

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide a complete system for the management of Incident and Grievance responses which will assist in managing safety and quality of services within the San Francisco Health Network (SFHN). The system will include flexible event reports that encourage analysis and will be used to meet for regulatory requirements. In addition to a fully functional hosted application, the contractor will also provide project management, design, programming, testing, documentation, and system integration services in support of the application.

B. Explain why this service is necessary and the consequence of denial:

A comprehensive system for the management of Incident and Grievance responses is necessary to ensure the safety and quality of services within the San Francisco Health Network (SFHN). A comprehensive Solution will also enable DPH to perform root-cause analysis. This will ultimately reduce the number of incidents and overall risk within the SFHN. Capturing and organizing events from staff and patients makes it possible to pinpoint opportunities that directly translate into better outcomes and cost savings. If the request is denied, incidents and grievances at various facilities within the SFHN will not be monitored and reported as effectively as needed, the Department will be unable to serve clients effectively, and will be out of compliance with reporting requirements.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48890 - 18/19

D. Will the contract(s) be renewed?

Yes, as needed, depending on funding availability.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

To add funds and extend the term in support of an anticipated ongoing need for these services.

**2. Reason(s) for the Request**

A. Display all that apply

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

These services require proprietary software, systems and related expertise.

B. Reason for the request for modification:

To add funds and extend the term in support of an anticipated ongoing need for these services.

### **3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: DPH require a Solution that is in commercial use at a healthcare setting that would require minimal customization. The Solution must include flexible event reports that encourage analysis and may be used for regulatory requirements. Data must be accessible, easily retrieved for creating alerts and email triggers for new incidences or overdue items. The availability of shared data allows for staff to conduct investigations and complete the required follow-up in accordance with federal, state and DPH metrics for safety, quality, fiscal stewardship and patient experience. Patients, family and visitors may submit directly into the Solution through the user-access website. The Solution will also include adverse events entered by staff that were not submitted as written grievances but are important to operational efficiency and improvement.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, the contractor will provide a fully hosted, web-based application. The contractor will provide all hardware and a secured location to host the application.

### **4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

### **5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Civil service classes are not applicable because is not feasible for the Department to create from scratch a fully functional and comprehensive remotely hosted incident and grievance application. The software needed is highly specialized. The necessary resources to develop and provide ongoing support for a commercially available application are not available with civil service resources, since such ongoing support is typically provided by the manufacturer of the software in order to ensure compliance with all warranties and performance standards.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: Civil service classes are not applicable due to the proprietary nature of the information systems and the specific knowledge required to bring this new technology to full production status in the DPH environment.

### **6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
City staff will have the opportunity to learn industry best practices in a given field and the use of the new application. Classifications which may receive training include the IS Engineer series: 1042, 1043, 1052, 1053, and 1054.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

**7. Union Notification:** On 03/17/23, the Department notified the following employee organizations of this PSC/RFP request:

Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 1380 Howard Street #421B, San Francisco, CA, 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48890 - 18/19

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

Receipt of Modification Request to PSC # 48890 - 18/19 - MODIFICATIONS

dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org>  
on behalf of  
kelly.hiramoto@SFDPH.org <kelly.hiramoto@sfdph.org>

Fri 3/17/2023 5:04 PM

To: Hiramoto, Kelly (DPH) <kelly.hiramoto@sfdph.org>;Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>;ewallace@ifpte21.org <ewallace@ifpte21.org>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;tmathews@ifpte21.org <tmathews@ifpte21.org>;kschumacher@ifpte21.org <kschumacher@ifpte21.org>;amakayan@ifpte21.org <amakayan@ifpte21.org>;l21pscreview@ifpte21.org <l21pscreview@ifpte21.org>;Rossi, Ron (DPH) <ron.rossi@sfdph.org>;DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC HEALTH -- DPH has submitted a modification request for a Personal Services Contract (PSC) for \$650,000 for services for the period May 16, 2022 – December 31, 2030. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/16736>

Email sent to the following addresses: L21PSCReview@ifpte21.org  
amakayan@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org  
wendywong26@yahoo.com WendyWong26@yahoo.com ewallace@ifpte21.org  
junko.laxamana@sfgov.org

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # 48890 - 18/19)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Software solution for Incident and grievance response system

Funding Source: General Fund

PSC Original Approved Amount: \$600,000 PSC Original Approved Duration: 10/01/19 - 09/30/25 (6 years 1 day).

PSC Mod#1 Amount: \$299,000 PSC Mod#1 Duration: no duration added

PSC Cumulative Amount Proposed: \$899,000 PSC Cumulative Duration Proposed: 6 years 1 day

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide a complete system for the management of Incident and Grievance responses which will assist in managing safety and quality of services within the San Francisco Health Network (SFHN). The system will include flexible event reports that encourage analysis and will be used to meet for regulatory requirements. In addition to a fully functional hosted application, the contractor will also provide project management, design, programming, testing, documentation, and system integration services in support of the application.

B. Explain why this service is necessary and the consequence of denial:

A comprehensive system for the management of Incident and Grievance responses is necessary to ensure the safety and quality of services within the San Francisco Health Network (SFHN). A comprehensive Solution will also enable DPH to perform root-cause analysis. This will ultimately reduce the number of incidents and overall risk within the SFHN. Capturing and organizing events from staff and patients makes it possible to pinpoint opportunities that directly translate into better outcomes and cost savings. If the request is denied, incidents and grievances at various facilities within the SFHN will not be monitored and reported as effectively as needed, the Department will be unable to serve clients effectively, and will be out of compliance with reporting requirements.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48890 - 18/19

D. Will the contract(s) be renewed?

Yes, as needed, depending on funding availability.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

These are core public health software services that are anticipated to be needed on an ongoing basis.

**2. Reason(s) for the Request**

A. Display all that apply

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

These services require proprietary software, systems and related expertise.

B. Reason for the request for modification:

To add funds in support of anticipated cost.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: DPH require a Solution that is in commercial use at a healthcare setting that would require minimal customization. The Solution must include flexible event reports that encourage analysis and may be used for regulatory requirements. Data must be accessible, easily retrieved for creating alerts and email triggers for new incidences or overdue items. The availability of shared data allows for staff to conduct investigations and complete the required follow-up in accordance with federal, state and DPH metrics for safety, quality, fiscal stewardship and patient experience. Patients, family and visitors may submit directly into the Solution through the user-access website. The Solution will also include adverse events entered by staff that were not submitted as written grievances but are important to operational efficiency and improvement.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, the contractor will provide a fully hosted, web-based application. The contractor will provide all hardware and a secured location to host the application.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Civil service classes are not applicable because is not feasible for the Department to create from scratch a fully functional and comprehensive remotely hosted incident and grievance application. The software needed is highly specialized. The necessary resources to develop and provide ongoing support for a commercially available application are not available with civil service resources, since such ongoing support is typically provided by the manufacturer of the software in order to ensure compliance with all warranties and performance standards.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: Civil service classes are not applicable due to the proprietary nature of the information systems and the specific knowledge required to bring this new technology to full production status in the DPH environment.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
City staff will have the opportunity to learn industry best practices in a given field and the use of the new application. Classifications which may receive training include the IS Engineer series: 1042, 1043, 1052, 1053, and 1054.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.



F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 06/21/21, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jacquie Hale Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 1380 Howard Street #421B, San Francisco, CA, 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48890 - 18/19

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 07/01/2021

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH -- DPH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Software solution for Incident and grievance response system

Funding Source: General Fund

PSC Duration: 6 years 1 day

PSC Amount: \$600,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide a complete system for the management of Incident and Grievance responses which will assist in managing safety and quality of services within the San Francisco Health Network (SFHN). The system will include flexible event reports that encourage analysis and will be used to meet for regulatory requirements. In addition to a fully functional hosted application, the contractor will also provide project management, design, programming, testing, documentation, and system integration services in support of the application.

B. Explain why this service is necessary and the consequence of denial:

A comprehensive system for the management of Incident and Grievance responses is necessary to ensure the safety and quality of services within the San Francisco Health Network (SFHN). A comprehensive Solution will also enable DPH to perform root-cause analysis. This will ultimately reduce the number of incidents and overall risk within the SFHN. Capturing and organizing events from staff and patients makes it possible to pinpoint opportunities that directly translate into better outcomes and cost savings. If the request is denied, incidents and grievances at various facilities within the SFHN will not be monitored and reported as effectively as needed, the Department will be unable to serve clients effectively, and will be out of compliance with reporting requirements.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The Department currently has a legacy software solution which is being replaced by an up to date web based, remotely hosted, system.

D. Will the contract(s) be renewed?

Yes, as needed, depending on funding availability.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

These are core public health software services that are anticipated to be needed on an ongoing basis.

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

These services require proprietary software, systems and related expertise.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: DPH require a Solution that is in commercial use at a healthcare setting that would require minimal customization. The Solution must include flexible event reports that encourage analysis and may be used for regulatory requirements. Data must be accessible, easily retrieved for creating alerts and email triggers for new incidences or overdue items. The availability of shared data allows for staff to conduct investigations and complete the required follow-up in accordance with federal, state and DPH metrics for safety, quality, fiscal stewardship and patient experience. Patients, family and visitors may submit directly into the Solution through the user-access website. The Solution will also include adverse events entered by staff that were not submitted as written grievances but are important to operational efficiency and improvement.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, the contractor will provide a fully hosted, web-based application. The contractor will provide all hardware and a secured location to host the application.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

It is not feasible for the Department to create from scratch a fully functional and comprehensive remotely hosted incident and grievance application.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Civil service classes are not applicable because is not feasible for the Department to create from scratch a fully functional and comprehensive remotely hosted incident and grievance application. The software needed is highly specialized. The necessary resources to develop and provide ongoing support for a commercially available application are not available with civil service resources, since such ongoing support is typically provided by the manufacturer of the software in order to ensure compliance with all warranties and performance standards.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. Civil service classes are not applicable due to the proprietary nature of the information systems and the specific knowledge required to bring this new technology to full production status in the DPH environment.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. City staff will have the opportunity to learn industry best practices in a given field and the use of the new application. Classifications which may receive training include the IS Engineer series: 1042, 1043, 1052, 1053, and 1054.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 01/22/2019, the Department notified the following employee organizations of this PSC/RFP request:  
Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jacquie Hale Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 1380 Howard Street #421B San Francisco, CA, 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48890 - 18/19

DHR Analysis/Recommendation:

action date: 08/19/2019

Commission Approval Required

Approved by Civil Service Commission

08/19/2019 DHR Approved for 08/19/2019

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION

Dept. Code: PUC

Type of Request:  Initial  Modification of an existing PSC (PSC # 45085 - 19/20)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Biosolids Beneficial Use – Land Application (68413)

Funding Source: Wastewater Enterprise Operating Budget

PSC Original Approved Amount: \$5,700,000 PSC Original Approved Duration: 04/15/20 - 04/14/25 (5 years)

PSC Mod#1 Amount: \$3,600,000 PSC Mod#1 Duration: 04/15/23-04/14/27 (2 years)

PSC Cumulative Amount Proposed: \$9,300,000 PSC Cumulative Duration Proposed: 7 years

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

The contractor works with ranchers and farmers to use biosolids as a fertilizer. The contractor secures all necessary permitting required for the use of biosolids as a fertilizer. Annual fees for permitting are paid by the contractor. The contractor manages the agronomic application of biosolids so that nitrogen added to fields does not exceed crop uptake needs. When sufficient biosolids have been added to a field to meet its nitrogen needs, the contractor moves the application operation to a new field. When moving to a new field, the contractor is responsible for coordinating with the trucking contractor for the transportation of biosolids to the new location. The contractor is responsible for ensuring the all county ordinances are followed during the course of operations at each field. This includes the posting of signs, flagging of buffer areas where biosolids are not to be applied, setting up a mobile weather station, a portable toilet and a washdown station for trucks. The contractor is responsible for the spreading and discing (incorporation) of the biosolids on each field. Co-ordination with the ranchers, farmers, and county is the responsibility of the contractor.

**B. Explain why this service is necessary and the consequence of denial:**

The City's wastewater treatment plants separate solids out from influent and send them to anaerobic digesters where they are biologically treated. The resulting material is called biosolids, a nutrient rich material which is used as a fertilizer. On average the city produces 175 wet tons of biosolids a day. This material is a resource but there must be a system in place for its reuse. There is only storage for approximately 24 hours worth of biosolids production at the City's wastewater treatment plants.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

Services have been provided in the past through earlier PSC request. See 45085 - 19/20

**D. Will the contract(s) be renewed?**

Yes.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

The PSC duration is requested for a modification to a total of seven years. The reason for the duration extension is because the contract is in the process of being modified for a duration of seven years. Approval for this contract and PSC at the duration of seven years will keep the approvals in line with each other.

**2. Reason(s) for the Request**

**A. Display all that apply**

- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

This service requires permits that can take multiple years to secure, agreements with farmers and ranchers, heavy equipment and facilities in Solano County to store this equipment. The Wastewater Enterprise does not have these resources necessary for the execution of the services this contract provides.

B. Reason for the request for modification:

The PSC is being modified to extend the duration for an additional two years for a total of seven years and increase the amount by \$3,600,000 for a total of \$9,300,000. The department is in the process of modifying the contract duration and contract amount. The PSC modifications address the time extension and also the additional funds needed for the additional years on the contract. The reason for extending the contract is to lock in the current price and to avoid rebidding the contract more frequently than necessary. Approval for this contract and PSC at the dollar amount listed and duration of seven years will keep the approvals in line with each other.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: This contract requires an agronomist with experience in biosolids application, biosolids permitting and biosolids regulations. Agronomic rates must be calculated for each field. Operations must abide by all regulatory requirements. This contract also requires heavy equipment associated with the application of biosolids including front loaders, tractors, biosolids spreaders, and discs.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractor provides permitted land for biosolids reuse, and heavy equipment associated with the application of biosolids including front loaders, tractors, biosolids spreaders, and discs.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The city does not hold any permits for the application of biosolids for agricultural use. These permits are held by the contractor through an agreement with the farms and ranches where biosolids are applied. The city also does not own the equipment necessary for the application and incorporation of biosolids, nor does the city have a facility to store this equipment in Solano County where the work for this contract occurs. There is also no civil service classification for agronomist.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: Agronomist could be adopted as a new civil service class. However the city would still not have the requisite permitting nor have the equipment or agreements with farms and ranches necessary to achieve this scope of work.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
The contractor will not train City employees as there are currently no plans for City employees to perform this work.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 03/07/23, the Department notified the following employee organizations of this PSC/RFP request:  
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sfwater.org

Address: 525 Golden Gate Avenue 8th Floor, San Francisco, CA

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 45085 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**





Email sent to the following addresses: Please check the record to see if you selected a union where a corresponding email in the TO: field isn't present.

Either you selected none or there is no email entered in the system by that particular union

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Biosolids Beneficial Use – Land Application (68413)

Funding Source: Wastewater Enterprise Operating Budget PSC Duration: 5 years

PSC Amount: \$5,700,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The contractor works with ranchers and farmers to use biosolids as a fertilizer. The contractor secures all necessary permitting required for the use of biosolids as a fertilizer. Annual fees for permitting are paid by the contractor. The contractor manages the agronomic application of biosolids so that nitrogen added to fields does not exceed crop uptake needs. When sufficient biosolids have been added to a field to meet its nitrogen needs, the contractor moves the application operation to a new field. When moving to a new field, the contractor is responsible for coordinating with the trucking contractor for the transportation of biosolids to the new location. The contractor is responsible for ensuring the all county ordinances are followed during the course of operations at each field. This includes the posting of signs, flagging of buffer areas where biosolids are not to be applied, setting up a mobile weather station, a portable toilet and a washdown station for trucks. The contractor is responsible for the spreading and discing (incorporation) of the biosolids on each field. Co-ordination with the ranchers, farmers, and county is the responsibility of the contractor.

B. Explain why this service is necessary and the consequence of denial:

The City's wastewater treatment plants separate solids out from influent and send them to anaerobic digesters where they are biologically treated. The resulting material is called biosolids, a nutrient rich material which is used as a fertilizer. On average the city produces 175 wet tons of biosolids a day. This material is a resource but there must be a system in place for its reuse. There is only storage for approximately 24 hours worth of biosolids production at the City's wastewater treatment plants.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has always been provided through a contract. The previous contract number was 68412 with PSC number 44486-1819.

D. Will the contract(s) be renewed?

Yes.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

This service requires permits that can take multiple years to secure, agreements with farmers and ranchers, heavy equipment and facilities in Solano County to store this equipment. The Wastewater Enterprise does not have these resources necessary for the execution of the services this contract provides.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: This contract requires an agronomist with experience in biosolids application, biosolids permitting and biosolids regulations. Agronomic rates must be calculated for each field. Operations must abide by all regulatory requirements. This contract also requires heavy equipment associated with the application of biosolids including front loaders, tractors, biosolids spreaders, and discs.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractor provides permitted land for biosolids reuse, and heavy equipment associated with the application of biosolids including front loaders, tractors, biosolids spreaders, and discs.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Wastewater Enterprise has not made an effort to obtain these services through available resources within the city.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

The city does not hold any permits for the application of biosolids for agricultural use. These permits are held by the contractor through an agreement with the farms and ranches where biosolids are applied. The city also does not own the equipment necessary for the application and incorporation of biosolids, nor does the city have a facility to store this equipment in Solano County where the work for this contract occurs. There is also no civil service classification for agronomist.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. Agronomist could be adopted as a new civil service class. However the city would still not have the requisite permitting nor have the equipment or agreements with farms and ranches necessary to achieve this scope of work.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. The contractor will not train City employees as there are currently no plans for City employees to perform this work.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 01/24/2020, the Department notified the following employee organizations of this PSC/RFP request:  
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Bill Irwin Phone: 415-934-3975 Email: wirwin@sfgwater.org

Address: 525 Golden Gate Avenue 8th Floor San Francisco, CA

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 45085 - 19/20

DHR Analysis/Recommendation:

action date: 03/02/2020

Commission Approval Required

Approved by Civil Service Commission

03/02/2020 DHR Approved for 03/02/2020

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION

Dept. Code: PUC

Type of Request:  Initial  Modification of an existing PSC (PSC # 47657 - 21/22)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Water & Sewer Rate Consulting Services

Funding Source: SFPUC General Fund

PSC Original Approved Amount: \$350,000 PSC Original Approved Duration: 03/01/22 - 06/30/24 (2 years 17 weeks)

PSC Mod#1 Amount: \$280,000 PSC Mod#1 Duration: no duration added

PSC Cumulative Amount Proposed: \$630,000 PSC Cumulative Duration Proposed: 2 years 17 weeks

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

An independent review of revenue requirements, costs of service, and rates for the utilities under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC).

B. Explain why this service is necessary and the consequence of denial:

An independent external cost of service and rate study is required at least every five years by the San Francisco Charter Section 8B.125. The last study was completed in 2018; this PSC will be for a study to propose rates beginning July 1, 2023.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47657 - 21/22

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

N/A

**2. Reason(s) for the Request**

A. Display all that apply

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

Explain the qualifying circumstances:

An independent external cost of service and rate study is required at least every five years by the San Francisco Charter Section 8B.125. The last study was completed in 2018; this PSC will be for a study to propose rates beginning July 1, 2023.

B. Reason for the request for modification:

The SFPUC is required by the San Francisco Charter to engage an independent rate consultant for each of its enterprises at least every 5 years. The last Water and Sewer rate study was completed in 2018, so a new study must be completed in Fiscal Year 2023. The results of this rate study will be used to adopt rates that go into effect in FY 23-24 (July 1, 2023), and the rates must be adopted in spring 2023 to meet that deadline. These immovable deadlines and mandatory contracting requirements must be met to comply with San Francisco law. The initial contract not to exceed (NTE) amount of \$350,000 was defined in the request for proposal (RFP). The NTE amount was copied from the 2018 rate study and was not updated in the RFP to reflect inflation or the difference in scope. However, the total budget available for the rate study is double the NTE amount in the RFP. Our consultant is nearing the current NTE amount in the existing contract, and still has key deliverables that must be completed

before the rates can be approved by the Commission. In order to prevent a delay in adoption of rates which would jeopardize the SFPUC's ability to collect revenues to fund its operations, the consultant needs to complete the full scope in this set timeframe.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Knowledge of utility design and operation, economic theory, cost accounting, and rate principles.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: no

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The City Charter specifies the study be done by an independent rate consultant.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, because it would not meet the City Charter requirement.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
The City Charter specifies the study be done by an independent rate consultant.
- C. Are there legal mandates requiring the use of contractual services?  
This service became necessary after the approval of the City Charter Section 8B.125 in 2002.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 03/09/23, the Department notified the following employee organizations of this PSC/RFP request:  
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sfgwater.org

Address: 525 Golden Gate Ave 8th FL, San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47657 - 21/22

DHR Analysis/Recommendation:

Commission Approval Required

DHR Approved for 04/17/2023

Civil Service Commission Action:

# **Receipt of Union Notification(s)**

**From:** [dhr-psccoordinator@sfgov.org](mailto:dhr-psccoordinator@sfgov.org) on behalf of [shale@sfgwater.org](mailto:shale@sfgwater.org)  
**To:** [CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.](mailto:Hale, Shawndrea M.; khughes@ibew6.org; ewidth@ifpte21.org; ewidth@ifpte21.org; plangrooferlocal40@gmail.com; rooferslocal40@gmail.com; seichenberger@local39.org; dtuttle@oe3.org; dtubble@oe3.org; pkim@ifpte21.org; najuawanda.daniels@seiu1021.org; pking@uapd.com; president@sanfranciscodsa.com; max.porter@seiu1021.org; kennethlomba@gmail.com; snarano@cirseiu.org; mdennis@twusf.org; rmarenco@twusf.org; pwilson@twusf.org; cmoyer@nccrc.org; noah.frigault@sfgov.org; sfdpoa@cloud.com; Mjayne@iam1414.org; Emanuel, Rachel (DEM); laborers261@gmail.com; junko.laxamana@sfgov.org; jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; tracym@sfpoa.org; mleach@ibt856.org; rooferslocal40@gmail.com; sal@local16.org; Criss@sfmea.com; Julie.Meyers@sfgov.org; seichenberger@local39.org; jason.klumb@seiu1021.org; Camaguey@sfmea.com; ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Basconillo, Kathy; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sfflocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmllocal300.org; ramonliuna261@gmail.com; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Sin.Yee.Poon@sfgov.org; smcgarry@nccrc.org; rmtchell@twusf.org; grojo@local39.org; iduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; L21PSCReview@ifpte21.org; laborers261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; Christina@sfmea.com; ecdemvoter@aol.com; thomas.vitale@seiu1021.org; dhr-psccoordinator@sfgov.org</a><br/><b>Subject:</b> Receipt of Modification Request to PSC # 47657 - 21/22 - MODIFICATIONS<br/><b>Date:</b> Thursday, March 9, 2023 10:38:16 AM</p><hr/></div><div data-bbox=)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a modification request for a Personal Services Contract (PSC) for \$280,000 for services for the period March 3, 2023 – June 30, 2024. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/19987>

Email sent to the following addresses: Please check the record to see if you selected a union where a corresponding email in the TO: field isn't present. Either you selected none or there is no email entered in the system by that particular union

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Water & Sewer Rate Consulting Services

Funding Source: SFPUC General Fund

PSC Duration: 2 years 17 weeks

PSC Amount: \$350,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

An independent review of revenue requirements, costs of service, and rates for the utilities under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC).

B. Explain why this service is necessary and the consequence of denial:

An independent external cost of service and rate study is required at least every five years by the San Francisco Charter Section 8B.125. The last study was completed in 2018; this PSC will be for a study to propose rates beginning July 1, 2023.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service became necessary after the approval of the City Charter Section 8B.125 in 2002. This service was provided in the past via PSC No.47343-15/16 PUC.PRO.0034.

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

N/A

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

B. Explain the qualifying circumstances:

An independent external cost of service and rate study is required at least every five years by the San Francisco Charter Section 8B.125. The last study was completed in 2018; this PSC will be for a study to propose rates beginning July 1, 2023.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Knowledge of utility design and operation, economic theory, cost accounting, and rate principles.

- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: no

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

None, because the City Charter requires the study be done by an independent rate consultant.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The City Charter specifies the study be done by an independent rate consultant.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, because it would not meet the City Charter requirement.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. The City Charter specifies the study be done by an independent rate consultant.
- C. Are there legal mandates requiring the use of contractual services?  
Yes. This service became necessary after the approval of the City Charter Section 8B.125 in 2002.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification: On 12/06/2021, the Department notified the following employee organizations of this PSC/RFP request:  
all unions were notified**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sflower.org

Address: 525 Golden Gate Ave 8th FL San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47657 - 21/22

DHR Analysis/Recommendation:

Commission Approval Required

02/07/2022 DHR Approved for 02/07/2022

action date: 02/07/2022

Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: TREASURER/TAX COLLECTOR

Dept. Code: TTX

Type of Request:  Initial  Modification of an existing PSC (PSC # 4083 12/13)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Data migration and business process development professional services

Funding Source: General fund

PSC Original Approved Amount: \$3,000,000 PSC Original Approved Duration: 05/31/13 - 06/30/18 (5 years 4 weeks)

PSC Mod#1 Amount: \$1,400,000 PSC Mod#1 Duration: no duration added

PSC Mod#2 Amount: no amount added PSC Mod#2 Duration: 07/01/18-12/31/20 (2 years 26 weeks)

PSC Mod#3 Amount: \$700,000 PSC Mod#3 Duration: 09/20/18-06/30/22 (1 year 25 weeks)

PSC Mod#4 Amount: \$200,000 PSC Mod#4 Duration: no duration added

PSC Mod#5 Amount: \$700,000 PSC Mod#5 Duration: no duration added

PSC Mod#6 Amount: \$500,000 PSC Mod#6 Duration: 07/07/21-05/30/23 (47 weeks 5 days)

PSC Mod#7 Amount: \$500,000 PSC Mod#7 Duration: no duration added

PSC Mod#8 Amount: \$1,200,000 PSC Mod#8 Duration: no duration added

PSC Mod#9 Amount: \$10,000,000 PSC Mod#9 Duration: 03/09/23-05/31/33 (10 years 4 days)

PSC Cumulative Amount Proposed: \$18,200,000 PSC Cumulative Duration Proposed: 20 years 5 days

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Gross Receipts Tax and Business Registration Fees Ordinance (2012 Proposition E) was approved by San Francisco voters on November 6, 2012. It mandates that the City implement changes to local business taxes and registration fees by January 1, 2014 with a phased implementation through 2018. The Treasurer & Tax Collector has previously procured proprietary software that requires data migration and business process development to meet the requirements of the Ordinance.

B. Explain why this service is necessary and the consequence of denial:

Data migration and business process development must occur in order for the Treasurer & Tax Collector to collect taxes and fees totaling approximately \$500 million annually. Denial would result in the City failing to meet the voter mandated timeline and put millions of tax dollars at risk.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

PSC 4083 12-13

D. Will the contract(s) be renewed?

Potentially, if needed.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The Treasurer and Tax Collector (TTX) is mandated to implement changes to local business taxes and registration fees per Gross Receipt Tax and Business Registration Fees Ordinance. TTX has previously procured proprietary software from Manatron for Government Revenue Management (GRM) that requires data migration and business process development to meet the requirements of the Ordinance. 21 Tech LLC is the entity developing all of the online applications required for taxpayers to comply with Gross Receipts and has sole, exclusive rights to connect those applications to Manatron's Government Revenue Management (GRM) solution. Tax forms are updated annually, requiring long term support from 21 Tech to make necessary online application configurations.



**2. Reason(s) for the Request**

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

This agreement will provide additional resources to support Treasurer-Tax Collector work as the Department seeks to implement the complex requirements of the new Gross Receipts Tax over a phased implementation period lasting until 2018.

B. Reason for the request for modification:

Extending this sole source contract for an additional 10 years and 10 million dollars for ongoing online tax form modifications.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Expertise in data migration and business process development and documentation. Experience working with the GRM application as an analyst and knowledge of the GRM software functionality and file structure.

B. Which, if any, civil service class(es) normally perform(s) this work? 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1062, IS Programmer Analyst; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

This agreement will provide additional resources to support Treasurer-Tax Collector work. The Department has the classifications and the contractors will work in tandem on the project. In addition, Treasurer-Tax Collector staff will be hired to complete ongoing and daily tasks.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: N/A

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Please see attachment.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

7. **Union Notification:** On 03/09/23, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amanda Wentworth Phone: 14155544871 Email: amanda.wentworth@sfgov.org

Address: 1 Dr. Carlton B Goodlett Pl, Room 140, San Francisco, CA, 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 4083 12/13

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 04/17/2023

# **Receipt of Union Notification(s)**

## Choi, Suzanne (HRD)

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**From:** dhr-psccordinator@sfgov.org on behalf of amanda.wentworth@sfgov.org  
**Sent:** Thursday, March 9, 2023 11:59 AM  
**To:** Wentworth, Amanda (TTX); ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscreview@ifpte21.org; erica.finkle@sfgov.org; DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Modification Request to PSC # 4083 12/13 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The TREASURER/TAX COLLECTOR -- TTX has submitted a modification request for a Personal Services Contract (PSC) for \$10,000,000 for services for the period March 9, 2023 – May 31, 2033. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/5589>

Email sent to the following addresses: L21PSCReview@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ecassidy@ifpte21.com ewallace@ifpte21.org

# **Additional Attachment(s)**

**PSC 4083 12/13 Modification 1**

**Training**

*Describe training and indicate approximate number of hours:*

Business process and administrative user training. Estimated 40 hours of training.

*Indicate occupational type of City and County employees to receive training and approximate number to be trained:*

Business analysts and programmers (2-3 employees) – 1052 and 1054 job class

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: TREASURER/TAX COLLECTOR

Dept. Code: TTX

Type of Request:  Initial  Modification of an existing PSC (PSC # 4083 12/13)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Data migration and business process development professional services

Funding Source: General fund

PSC Original Approved Amount: \$3,000,000 PSC Original Approved Duration: 05/31/13 - 06/30/18 (5 years 4 weeks)

PSC Mod#1 Amount: \$1,400,000 PSC Mod#1 Duration: no duration added

PSC Mod#2 Amount: no amount added PSC Mod#2 Duration: 07/01/18-12/31/20 (2 years 26 weeks)

PSC Mod#3 Amount: \$700,000 PSC Mod#3 Duration: 09/20/18-06/30/22 (1 year 25 weeks)

PSC Mod#4 Amount: \$200,000 PSC Mod#4 Duration: no duration added

PSC Mod#5 Amount: \$700,000 PSC Mod#5 Duration: no duration added

PSC Mod#6 Amount: \$500,000 PSC Mod#6 Duration: 07/07/21-05/30/23 (47 weeks 5 days)

PSC Mod#7 Amount: \$500,000 PSC Mod#7 Duration: no duration added

PSC Mod#8 Amount: \$1,200,000 PSC Mod#8 Duration: no duration added

PSC Cumulative Amount Proposed: \$8,200,000 PSC Cumulative Duration Proposed: 10 years 1 day

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Gross Receipts Tax and Business Registration Fees Ordinance (2012 Proposition E) was approved by San Francisco voters on November 6, 2012. It mandates that the City implement changes to local business taxes and registration fees by January 1, 2014 with a phased implementation through 2018. The Treasurer & Tax Collector has previously procured proprietary software that requires data migration and business process development to meet the requirements of the Ordinance.

B. Explain why this service is necessary and the consequence of denial:

Data migration and business process development must occur in order for the Treasurer & Tax Collector to collect taxes and fees totaling approximately \$500 million annually. Denial would result in the City failing to meet the voter mandated timeline and put millions of tax dollars at risk.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

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D. Will the contract(s) be renewed?

Potentially, if needed.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The Treasurer and Tax Collector (TTX) is mandated to implement changes to local business taxes and registration fees per Gross Receipt Tax and Business Registration Fees Ordinance. TTX has previously procured proprietary software from Manatron for Government Revenue Management (GRM) that requires data migration and business process development to meet the requirements of the Ordinance. 21 Tech LLC is the entity developing all of the online applications required for taxpayers to comply with Gross Receipts and has sole, exclusive rights to connect those applications to Manatron's Government Revenue Management (GRM) solution. Tax forms are updated annually, requiring long term support from 21 Tech to make necessary online application configurations.

**2. Reason(s) for the Request**

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

This agreement will provide additional resources to support Treasurer-Tax Collector work as the Department seeks to implement the complex requirements of the new Gross Receipts Tax over a phased implementation period lasting until 2018.

B. Reason for the request for modification:

Adding funds for additional online form modifications for the new tax year.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Expertise in data migration and business process development and documentation. Experience working with the GRM application as an analyst and knowledge of the GRM software functionality and file structure.

B. Which, if any, civil service class(es) normally perform(s) this work? 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1062, IS Programmer Analyst; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

This agreement will provide additional resources to support Treasurer-Tax Collector work. The Department has the classifications and the contractors will work in tandem on the project. In addition, Treasurer-Tax Collector staff will be hired to complete ongoing and daily tasks.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: N/A

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
Please see attachment.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
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7. **Union Notification:** On 08/19/22, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amanda Wentworth Phone: 14155544871 Email: amanda.wentworth@sfgov.org

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 4083 12/13

DHR Analysis/Recommendation:

09/19/2022

Commission Approval Required

Approved by Civil Service Commission

09/19/2022 DHR Approved for 09/19/2022